

Resolution No.: 16-712
Introduced: September 16, 2008
Adopted: September 16, 2008

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: County Council

SUBJECT: Approval of Executive Regulation 6-08, New Home Warranty and Builder Licensing

Background


1. On July 22, 2008, the County Council received Executive Regulation 6-08, *New Home Warranty and Builder Licensing*, from the County Executive.
2. Executive Regulation 6-08 is processed under Method 2, and will take effect on September 20, 2008 unless the Council takes action.

Action

The County Council for Montgomery County, Maryland approves the following resolution:

Executive Regulation 6-08, *New Home Warranty and Builder Licensing*, is approved.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject New Home Warranty and Builder Licensing	Number 6-08
Originating Department Office of Consumer Protection	Effective Date September 16, 2008

Montgomery County Regulation on:

NEW HOME WARRANTY AND BUILDER LICENSING OFFICE OF CONSUMER PROTECTION

Issued By: County Executive
Regulation No.

Authority: Code Section 31C-14

Supersedes: Executive Regulation No. 17-02

Council Review: Method (2) under Code Section 2A-15

Register Vol. 25, Issue 4

Comment Deadline: April 30, 2008

Effective Date:

Sunset Date: None

SUMMARY:

Executive Regulation 17-02:

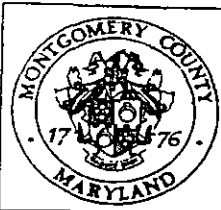
- (1) prescribes the form and coverage of the minimum warranty;
- (2) governs procedures for the processing of claims under the warranty;
- (3) establishes requirements for building licensing;
- (4) details procedures governing the denial, revocation, and suspension of builders' licenses; and
- (5) establishes requirements of private Alternate New Home Warranty Security Programs and of the County New Home Warranty Security Fund.

This regulation amends Executive Regulation 17-02 by increasing the fee for builder licenses.

ADDRESS:

Office of Consumer Protection
100 Maryland Avenue, Room 330, Rockville, Maryland 20850

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Section 1. Preamble

- 1.1 Background information: Section 31C-14 of the Montgomery County Code (1984) as amended, allows the County Executive to issue regulations to implement this Chapter. This regulation sets forth the procedures for implementation of this Chapter. This regulation supersedes Executive Regulation 17-02 and increases the licensing fee from \$700.00 to \$805.00.

Section 2. Definitions

- 2.1 Board. "Board" means the Board of Registration.
- 2.2 Builder. "Builder" means any person or business organization:
- a. that is engaged in the business of erecting or otherwise creating a new home; or
 - b. to whom a completed new home is conveyed for resale in the course of the business of the person or business organization.
- 2.3 Certificate of Participation. "Certificate of Participation" means that certificate which is issued by the Office of Consumer Protection for each new home constructed by a builder participating in the County New Home Warranty Security Fund. This certificate signifies that a participating builder constructed the home and that premiums due have been paid.
- 2.4 Department. "Department" means the Office of Consumer Protection.
- 2.5 Director. "Director" means the Director of the Office of Consumer Protection or the Director's designee.
- 2.6 Dispute settler. "Dispute settler" means an independent contractor or inspector with building construction expertise hired by the Office of Consumer Protection.
- 2.7 DPS. "DPS" means the Department of Permitting Services.



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- 2.8 Finance. "Finance" means the Department of Finance.
- 2.9 The fund. "The fund" means the New Home Warranty Security Fund, which is money contributed by builders participating in the warranty program administered by the County.
- 2.10 Load-bearing portions of the home. "Load-bearing portions of the home" means:
- a. foundation system and footings;
 - b. beams;
 - c. girders;
 - d. lintels;
 - e. columns;
 - f. walls and partitions;
 - g. floor systems; and
 - h. roof framing system.
- 2.11 Major structural defect. A "Major structural defect":
- a. means any actual damage to load-bearing portions of the home that:
 - (i) affects its load bearing function; and
 - (ii) vitally affects use of the home for residential purposes;
 - b. includes damage due to subsidence, expansion, or lateral movement of the soil; and
 - c. does not include damage caused by movement of the soil resulting from flood or earthquake.
- 2.12 New home. "New home" means every newly constructed private dwelling unit and the fixtures and structure that are made a part of a newly constructed private dwelling unit at the time of construction.



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2.13 Owner. "Owner":

- a. means any person for whom the new home is built or to whom the home is sold for residential occupancy by:
 - (i) that person or the family of that person as a home; and
 - (ii) the successors of that person in title to the home or mortgagee in possession;
- b. does not mean:
 - (i) any development company, association, or subsidiary company of the builder; or
 - (ii) any person or organization to whom the home may be conveyed by the builder for any purpose other than residential occupancy by that person or organization.

2.14 Warranty Administrator. "Warranty Administrator" means the person who is responsible for administering all or any portion of the claims resolution and defect correction process of a private plan where that person is a legal entity different from the warranty guarantor.

2.15 Warranty date. "Warranty date" means the first day that the owner occupies or settles on the new home, whichever first occurs.

2.16 Warranty Guarantor. "Warranty Guarantor" means the person responsible for financially securing the warranty required to be offered pursuant to these regulations, on behalf of a private plan. The term shall mean and shall include a warranty administrator where a separate administrator is not established.



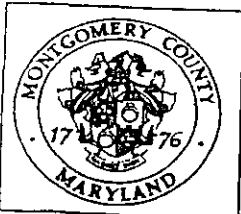
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Section 3. Builder Licensing

- 3.1 A builder must not engage in the business of erecting or otherwise creating a new home unless licensed with the Department.
- 3.2 For the purpose of these regulations, the term "engaging in the business of erecting or otherwise creating a new home" includes constructing any new home for sale, acting as prime contractor to construct any new home for another person or advertising or holding oneself out as constructing or being available to construct a new home or homes. The term also means and includes the sale or transfer of title to a parcel of land to any person and the subsequent participation in the construction of a new home or any part of a new home by the seller or transferor. The term also includes a person who contracts with a general contractor or with subcontractors for the construction of a new home for the purpose of sale to a purchaser.
- 3.3 A person who constructs a new home for his own or his immediate family's personal use and occupancy does not require a builder's license. An individual satisfies the licensing requirement of the Chapter by signing the affidavit contained on the application for building permit issued by DPS.
- This home will not be covered by a 10 year warranty. A Certificate stating that this home is not covered by the County's 10 year statutory warranty must accompany the building permit application. This Certificate is issued by the Department.
- 3.4 Every application for licensing must be made on the form prescribed by the Director and must be accompanied by a non-refundable licensing fee of \$805. The application must provide at least the following information:
- Full name and address of the business.
- In the case of a Corporation, the name entered on the application must be that registered with the State Department of Assessments and Taxation. In all cases, the address entered on the application must be the street number, street name, and municipality where the primary office of the applicant's business organization is located. The address cannot be a post office box or the address of an agent. The address must be that of a business office, unless there is none, in which case it may be a residence address.



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- b. If the business is a corporation, the applicant must appoint an agent for the service of process and must provide the agent's home address. The agent may be any person who is a resident of the State of Maryland.
 - c. The builder's business and home telephone numbers and the names and addresses and home phone numbers of all persons having a legal interest in the builder or the building entity.
 - d. References from at least three material suppliers, two general business references, and the name of the bank where the builder has a business account.
 - e. A summary of building experience as well as disclosure of any present or prior relationship with any other licensed builder.
 - f. Proof of participation in an approved alternate new home warranty security fund or designation of the County New Home Warranty Security Fund.
- 3.5 The Department may not issue a license to a builder who has or had any legal interest in a previously licensed firm that has or had a license revoked or suspended for any reason listed in Section 31C-8 of the Montgomery County Code. Legal interest means being responsible in whole or in part for the activities of the offending firm. However, when the previously licensed firm is a limited partnership, it will be presumed that any limited partners do not have a legal interest.
- 3.6 The Department will review each application for completeness before forwarding it to the Board of Registration for review. Incomplete applications will be returned to the applicant.
- 3.7 The Director must notify the applicant of the certification or denial of certification within 75 days after submission of a completed application.
- 3.8 A builder must provide to a purchaser at the time of occupancy or settlement, whichever first occurs, a statement signed by the builder, that the following County inspections have been performed.



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- a. footing
- b. foundation and pargeting
- c. building location plat
- d. electrical close-in
- e. building framing
- f. chimney and flue
- g. final electrical
- h. final plumbing
- i. septic system – certificate of completion
- j. well system – certificate of potability
- k. final building

- 3.9 The builder, in order to certify that this provision regarding final building inspection has been satisfied, must make a request to DPS at least five (5) days prior to settlement for a final inspection to be performed. If the final inspection has not been performed by the time of settlement, the builder must supply the homebuyer with a statement that all inspections, with the exception of the final inspection, have been performed and that the final inspection is scheduled.

Section 4. Warranty Coverage and Standards

- 4.1 The warranty specified in this section must be provided by all new home builders for new homes for which title is first transferred from builder to owner, or for which possession or occupancy is first given by builder to owner on or after July 9, 1986. Nothing in this warranty is to be construed to mean that either the County Warranty Security Fund or an alternate private warranty plan is responsible for guaranteeing the completion of a home in the event of builder bankruptcy before settlement occurs on the home. In addition, the warranty provided for in these regulations will not extend to those items listed as "extras" or "upgrades" as contained in contract addenda if these items are not installed.



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- 4.2 A new home sold to or constructed for an owner shall be considered given over for occupancy when the owner is authorized to occupy under any agreement between the builder and the owner.
- 4.3 A builder who sells a model home must provide the purchaser of the model home with the ten year warranty prescribed in these regulations.
- 4.4 The warranty is not required to be given under the following circumstances:
- a. on a condominium unit contained within a building of more than four stories; or
 - b. on general or limited common elements in a condominium regime.
- 4.5 The warranty required by these regulations is as follows:
- a. One year warranty: the new home must be free from any defect in materials or workmanship as defined in minimum performance standards. The warranty on the following list of items extends only for one year:
 - (i) smoke detector
 - (ii) fire alarms
 - (iii) fire extinguisher
 - (iv) garage door opener
 - (v) intercom
 - (vi) security systems
 - (vii) garbage disposal
 - (viii) water softener
 - (ix) refrigerator
 - (x) freezer
 - (xi) trash compactor
 - (xii) dishwasher



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(xiii) clothes washer

(xiv) clothes dryer

(xv) ice maker

(xvi) stoves/ranges

b. Two year warranty: the new home must be free from any defect in the electrical, plumbing, heating, cooling, ventilation, and mechanical systems.

(i) Electrical System. Includes but is not necessarily limited to: all wiring, electrical boxes, circuit boards, switches, outlets, overload protector devices, and connections up to the public utility connections.

(ii) Plumbing System. Includes but is not necessarily limited to: gas supply lines and fittings, water supply, waste and vent pipes and their fittings, septic tanks and their drain fields, water, gas and sewer service piping and their extension to the property line which tie into a public utility connection or on-site well and/or sewage disposal system, valves, faucets, fixtures and trim fittings, pumps, water heater and sprinkler systems.

(iii) Heating, Ventilating, Cooling and Mechanical Systems: includes but is not necessarily limited to the following: duct work, steam, water, and refrigerant lines, registers, convectors, radiation elements, dampers, boiler, heat pump, thermostat, furnace, air conditioning equipment, exhaust fans, oil tanks and fittings, air handling equipment and air purifiers.

c. Ten year warranty: the new home must be free from any major structural defect.

4.6 Each builder will be responsible for the correction of any defect that appears during any of the warranty periods specified in this section.

4.7 The builder's responsibility in the case of a defect covered by this warranty will include removal of the defects by repair or replacement or payment of the reasonable cost of repair or replacement. The builder will choose between repair, replacement or payment. The builder's responsibility will include actual reasonable shelter expenses during repairs. In order for the dispute settler to award shelter expenses, a determination must



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be made that the repair activity renders the house either unsafe or uninhabitable during the term of the repair.

When a defect covered by this warranty is removed by repair, replacement or payment of the reasonable cost of repair or replacement, a release with respect to that specific defect will be signed by the owner and the County and delivered to the builder.

- 4.8 The builder must receive written notice of a defect on any item under the warranty not later than 30 calendar days after the date on which the warranty on that item expires.
- 4.9 For purposes of these regulations, minimum performance standards applicable to all new homes for which construction commenced subsequent to the date the regulations are approved are as follows:

a. One Year Warranty

The following standards set minimum standards that prescribe the level for quality of materials and performance in workmanship. To the extent that detailed minimum performance standards have not been enumerated, builders will construct homes in accordance with good industry practice that assures quality of materials and workmanship. Likewise, the validity of any owner's claims for which a standard has not been enumerated will be determined on the basis of good industry practice.

(i) STANDARDS CONCERNING SITEWORK

- | | |
|-------------------------|---|
| a.) Possible Deficiency | Settling of ground around foundation, utility trenches or other areas. |
| Performance Standard | Settling of ground around foundation walls, utility trenches or other filled areas should not interfere with water drainage from the home. |
| Responsibility | If the builder is required to provide final grading, builder will fill settled areas affecting proper drainage. Builder is responsible for removal and replacement of shrubs and other landscaping installed by the builder affected by placement of the fill. Grassed or landscaped areas that are |



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disturbed during repair work is a defect. Builder is to restore grade, seed and landscape to meet proper condition. Landscaping added by the owner is not the responsibility of the builder.

b.) Possible Deficiency

Improper drainage of the site.

Performance Standard

The necessary grades and swales should have been established by the builder to insure proper drainage away from the home. Standing or ponding water should not remain for extended periods in the immediate area of the house after a rain, generally no more than 48 hours. The possibility of standing water after an unusually heavy rainfall should be anticipated by the owner. No grading determination shall be made while there is frost or snow on the ground, or while the ground is saturated.

Responsibility

The builder is responsible only for initially establishing the proper grades and swales. Owner is responsible for maintaining such grades and swales once they have been properly established by the builder.

(ii) STANDARDS CONCERNING CONCRETE

a.) Possible Deficiency

Basement or foundation wall cracks.

Performance Standard

Shrinkage cracks are not unusual in concrete foundation walls. Such cracks greater than 1/8 inch in width are to be repaired.

Responsibility

Builder will repair cracks in excess of 1/8 inch in width.



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- b.) Possible Deficiency** **Cracking basement floor.**
- Performance Standard Minor cracks in concrete basement floors are normal. Cracks exceeding 3/16 inch in width or 1/8 inch in vertical displacement are to be repaired.
- Responsibility Builder will repair cracks exceeding maximum tolerances by surface patching or other methods as required.
- c.) Possible Deficiency** **Cracking of slab in attached garage.**
- Performance Standard Cracks in garage slabs in excess of 1/4 inch in width or 1/4 inch in vertical displacement are to be repaired.
- Responsibility Builder will repair cracks exceeding maximum tolerances by surface patching or other methods as required.
- d.) Possible Deficiency** **Uneven concrete floor slabs.**
- Performance Standard Concrete floors in rooms designed for habitability should not have pits, depressions or areas of unevenness exceeding 1/4 inch in any 32 inch measurement.
- Responsibility Builder will correct or repair to meet the Performance Standard. When applicable, surface patching is an accepted method of repair. Builder will reinstall or replace any finish flooring materials as necessary.
- e.) Possible Deficiency** **Cracks in concrete slab-on-grade floors with finish flooring.**
- Performance Standard Cracks that rupture the finish flooring material are to be repaired.



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Responsibility

Builder will repair cracks, so as not to be readily apparent when the finish flooring material is in place. Builder will re-install or replace any finish flooring materials as necessary.

f.) Possible Deficiency

Pitting, scaling or spalling of concrete work.

Performance Standard

Concrete surfaces should not disintegrate to the extent that the aggregate is exposed and loosened under normal conditions of weathering and use.

Responsibility

Builder will take whatever corrective action necessary to repair or replace defective concrete surfaces. Builder is not responsible for deterioration caused by salt, chemicals, implements used and other factors beyond builder control.

g.) Possible Deficiency

Cracking, settling, or heaving of stoops and steps.

Performance Standard

Stoops and steps are not to settle or heave in excess of one inch in relation to the house structure. Cracks, except hairline cracks less than one eighth inch, are not acceptable in concrete stoops. A separation of up to one half inch is permitted where the stoop or steps abut the house or where an expansion strip has been installed.

Responsibility

Take whatever corrective action is required to meet acceptable standards. In a case where repair is made to the concrete surface, it is required that such repair match the adjoining surfaces as closely as possible or that the entire area be resurfaced or replaced.



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h.) Possible Deficiency

Standing water on stoops.

Performance Standard

Water should drain from outdoor stoops and steps. The possibility of minor water standing on stoops for a short period after rain can be anticipated.

Responsibility

Builder will take corrective action to assure drainage of steps and stoops.

i.) Possible Deficiency

Excessive powdering or chalking of non-excluded concrete surfaces.

Performance Standard

Powdering or chalking of concrete surfaces is not permissible, but should not be confused with surface dust.

Responsibility

The builder will take whatever corrective action is necessary to repair or resurface defective areas.

j.) Possible Deficiency

Cracks in structurally attached patios with footing or foundation systems.

Performance Standard

Cracks in excess of ¼ inch in width or ¼ inch in vertical displacement are considered excessive and unacceptable in structurally attached patios.

Responsibility

Builder to repair as required. Where cracks are caused by settlement or improper installation. Builder will replace that portion which has settled and finish to match existing surface as close as possible. Where a major portion of the patio has cracked, the entire patio will be replaced.



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(iii) STANDARDS CONCERNING MASONRY

a.) Possible Deficiency

Basement or foundation wall cracks.

Performance Standard

Small cracks not affecting structural stability are not unusual in mortar joints of masonry foundation walls. Cracks greater than 1/8 inch in width are to be repaired.

Responsibility

Builder will repair cracks in excess of 1/8 inch by pointing or patching.

b.) Possible Deficiency

Cracks in masonry walls or veneer.

Performance Standard

Small hairline cracks due to shrinkage are common in mortar joints in masonry construction. Cracks greater than 1/8 inch in width are considered excessive.

Responsibility

Builder will repair cracks in excess of performance standard by pointing or patching. Builder will not be responsible for color variation between old and new mortar, however, it should be made to match as close as possible. These repairs should be made toward the end of the first year warranty period to permit the home to stabilize and normal settlement to occur.

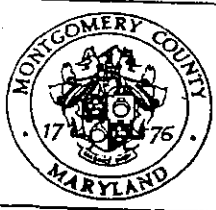
(iv) STANDARDS CONCERNING WOOD AND PLASTIC

a.) Possible Deficiency

Floors squeak or subfloor appears loose.

Performance Standard

Floor squeaks and loose subfloors are often temporary conditions common to new home construction, and a squeak-proof floor cannot be guaranteed.



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Responsibility

Builder will correct the problem if caused by faulty construction within reasonable repair capability. Where a finished ceiling exists under the floor, the corrective work may be attempted from the floor side. Where necessary, the builder will remove the finish floor materials to make the repair and reinstall or replace if damaged.

b.) Possible Deficiency

Uneven wood floors.

Performance Standard

Floors that are more than one quarter inch out of level within any 32 inch measurement is a deficiency. Floor slope within any room that exceeds 1/240 of the room width or length is a deficiency.

Responsibility

Builder will correct or repair to meet performance standard.

c.) Possible Deficiency

Bowed walls or ceilings.

Performance Standard

All interior and exterior walls have slight variations on their finished surfaces. Bowing of walls should not be visible so as to detract from the finished surface. Walls or ceilings bowed more than 1/4 inch within any 32 inch horizontal or vertical measurement is a deficiency.

Responsibility

Builder will repair to meet performance standard.

d.) Possible Deficiency

Out-of-plumb walls.

Performance Standard

Walls should not be more than 1/4 inch out-of-plumb for any 32 inch vertical measurement.

Responsibility

Builder will repair to meet the performance standard.



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e.) Possible Deficiency

Poor quality of exterior trim workmanship.

Performance Standard

Joints between exterior trim elements, including siding and masonry, should not result in open joints in excess of 3/8 inch. In all cases, the exterior trim, masonry and siding should be capable of performing its function to exclude the elements.

Responsibility

Builder will repair open joints and touch up finish coating where repaired to match what exists as close as possible. Caulking is acceptable for joints less than 1/2 inch in width.

f.) Possible Deficiency

Delamination or deterioration of exterior siding.

Performance Standard

Siding should not delaminate or deteriorate within manufacturer's specifications. Natural wood sidings can be expected to weather and change color as they age.

Responsibility

Builder will repair or replace as needed unless caused by owner's neglect to maintain siding properly. Repaired area should match as closely as possible in color and/or texture. The owner should be aware that the new finish may not exactly match the original surface texture or color.

(v) STANDARDS CONCERNING THERMAL AND MOISTURE PROTECTION

a.) Possible Deficiency

Leaks in basement or in foundation/crawl space.

Performance Standard

Leaks resulting in actual trickling of water through the walls or seeping through the floor are deficiencies. Leaks caused by changes in the landscaping installed by the owner, or failure of



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Responsibility

owner to maintain proper grades are not covered by the warranty.

Builder will take such action as necessary to correct basement and crawl space leaks, except where the cause is determined to be the result of homeowner action or negligence. Conditions contributing to water penetration will be repaired.

b.) Possible Deficiency

Insufficient insulation.

Performance Standard

Insulation should be installed in accordance with applicable energy and building code requirements.

Responsibility

Builder will install insulation in sufficient amounts to meet performance standard.

c.) Possible Deficiency

Leaks due to snow or rain driven into the attic through louvers or vents.

Performance Standard

Louvers and vents must not permit penetration of the elements under normal conditions. However, properly installed louvers and vents may, at times, allow penetration of rain and snow under strong conditions.

Responsibility

Builder will correct to meet requirements of the standard.

d.) Possible Deficiency

Roof or flashing leaks.

Performance Standard

Roofs or flashings should not leak under normally anticipated conditions, except where cause is attributed to the home owner's action or failure to properly maintain.

Responsibility

Builder will repair any roof or flashing leaks verified to have occurred under normal weather conditions.



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- e.) Possible Deficiency** **Standing water on roof.**
- Performance Standard A properly pitched roof is to drain water except for minor ponding. Dead flat roofs will retain a certain amount of water. Excessive ponding of water that causes leaking of roofing material is a deficiency.
- Responsibility Builder will take corrective action to assure proper drainage of roof and will repair all leaks due to or caused by standing water.
- f.) Possible Deficiency** **Delamination of veneer siding or joint separation.**
- Performance Standard All siding should be installed according to the manufacturer's and industry's accepted standards. Separations and delaminations are to be repaired or replaced.
- Responsibility Builder will repair or replace siding as needed. For surfaces requiring paint, builder will paint only the new materials. All reasonable efforts will be made to match original surface in color. The owner should be aware that the new finish may not exactly match the original surface texture or color.
- g.) Possible Deficiency** **Gutters and/or downspouts leak.**
- Performance Standard Gutters and downspouts should not leak and are to be sized not to overflow during heavy rainfall.
- Responsibility Builder will repair leaks. It is the owner's responsibility to keep gutters and downspouts free of leaves and debris that could cause overflow.



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h.) Possible Deficiency

Water standing in gutters.

Performance Standard

When gutter is unobstructed by debris, the water level should not exceed ½ inch in depth. Owner is responsible for keeping gutters and downspouts free from leaves and debris to prevent overflow.

Responsibility

Builder will correct to meet performance standards.

i.) Possible Deficiency

Leaks in exterior walls due to inadequate caulking.

Performance Standard

Joints and cracks in exterior wall surfaces and around openings are to be properly caulked to exclude the entry of water.

Responsibility

Builder will repair and/or caulk joints or cracks in exterior wall surfaces as required to correct deficiencies once. Even properly installed caulking will shrink and must be maintained by the owner.

(vi) STANDARDS CONCERNING DOORS AND WINDOWS

a.) Possible Deficiency

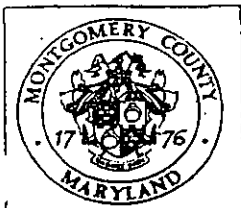
Warpage of exterior and interior doors

Performance Standard

Doors will warp to some degree. However, they should not warp to the extent that they become inoperable or cease to be weather resistant. The maximum allowable warpage is ¼ inch when measured from top to bottom.

Responsibility

Builder will correct or replace and refinish defective doors.



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b.) Possible Deficiency

Garage doors fail to operate properly under normal use.

Performance Standard

Garage doors should operate properly and fit the door opening.

Responsibility

Builder will make necessary adjustments.

c.) Possible Deficiency

Garage doors allow entrance of snow or water.

Performance Standard

Garage door should be installed as recommended by the manufacturer. Some entrance of the elements can be expected under abnormal conditions

Responsibility

Builder will adjust or correct garage doors.

d.) Possible Deficiency

Malfunction of windows.

Performance Standard

Windows should operate with reasonable ease, as designed.

Responsibility

Builder will correct or repair as required.

e.) Possible Deficiency

Air infiltration around doors and windows.

Performance Standard

Some infiltration is normally noticeable around doors and windows, especially during high winds. Poorly fitted weather stripping will be adjusted or replaced.

Responsibility

Builder will adjust or correct poorly fitted doors and windows, or poorly fitted weather stripping.

(vii) STANDARDS CONCERNING FINISHES

a.) Possible Deficiency

Cracks in interior wall and ceiling surfaces.

Performance Standard

Hairline cracks are not unusual in interior wall and ceiling surfaces. Cracks greater than 1/8 inch in width are to be repaired.

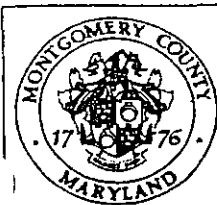


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| Responsibility | Builder will repair cracks exceeding 1/8 inch in width as required, one time only, during the first year warranty period. |
| b.) Possible Deficiency | Defects that appear during the first year of warranty such as nail pops, blisters in tape, or other blemishes. |
| Performance Standard | Slight "imperfections" such as nail pops, seam lines and cracks not exceeding 1/8 inch in width are common in gypsum wallboard installations and are considered acceptable. |
| Responsibility | Builder will repair cracks exceeding 1/8 inch in width. |
| c.) Possible Deficiency | Ceramic tile that cracks or becomes loose. |
| Performance Standard | Ceramic tile should not crack or become loose. |
| Responsibility | Builder will replace cracked tiles and secure loose tiles. In addition, builder will correct the cause of the loose or cracking tile condition. Builder will not be responsible for discontinued patterns or color variations in ceramic tile but will match as closely as possible. |
| d.) Possible Deficiency | Cracks appear in grouting of ceramic tile joints or at junctions with other material such as bathtub. |
| Performance Standard | Cracks in grouting of ceramic tile joints are commonly due to shrinking condition. |
| Responsibility | Builder will repair grouting as necessary, one time only. Builder will match as closely as possible. Regrouting of these cracks is a maintenance responsibility of the owner after the first year of warranty. |



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- e.) Possible Deficiency** Cracks developing between floor boards.
- Performance Standard Cracks in excess of 1/8 inch in width are to be corrected.
- Responsibility Builder will repair cracks in excess of 1/8 inch by filling or replacing.
- f.) Possible Deficiency** Nail pops appear on the surface of resilient flooring.
- Performance Standard Readily apparent nail pops are to be repaired.
- Responsibility Builder will correct nail pops that have broken the surface. Builder will repair or replace resilient floor covering in the affected area with similar material. Extent of builder's responsibility to replace flooring to assure acceptable color matching, etc. will be decided, if necessary, by dispute settler.
- g.) Possible Deficiency** Depressions or ridges appear in the resilient flooring due to subfloor irregularities.
- Performance Standard Readily apparent depressions or ridges exceeding 1/8 inch are to be repaired. The ridge or depression measurement is taken as the gap created at one end of a six-inch straightedge placed over the depression or ridge with three inches of the straightedge on one side of the defect, held tightly to the floor.
- Responsibility Builder will take corrective action, as necessary, to bring the defect within acceptable tolerance so that the affected area is not readily visible. Extent of builder's responsibility to replace flooring to assure acceptable color matching, etc. will be decided, if necessary, by dispute settler.



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- h.) Possible Deficiency** **Resilient flooring loses adhesion.**
- Performance Standard Resilient flooring should not lift, bubble or become unglued.
- Responsibility Builder will repair or replace the affected resilient flooring as required. Extent of builder's responsibility to replace flooring to assure acceptable color matching, etc. will be decided, if necessary, by dispute settler.
- i.) Possible Deficiency** **Seems or shrinkage gaps show at resilient flooring joints.**
- Performance Standard Gaps should not exceed 1/16 inch in width in resilient floor covering joints. Where dissimilar materials abut, a gap not to exceed 1/8 inch is permissible.
- Responsibility Builder will repair or replace the affected resilient flooring as required. Extent of builder's responsibility to replace flooring to assure acceptable color matching, etc. will be decided, if necessary, by dispute settler.
- j.) Possible Deficiency** **Exterior paint or stain peels, deteriorates or fades.**
- Performance Standard Exterior paints or stains should not fail during the first year warranty period. However, fading is normal and the degree is dependent on climatic conditions.
- Responsibility If paint or stain is defective, builder will properly prepare and refinish affected areas, matching color as closely as possible. Where finish deterioration affects the majority of the wall area, the extent of builder's responsibility to repaint the entire wall will be decided, if necessary, by the dispute settler.



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| k.) Possible Deficiency | Painting required as corollary repair because of other work. |
| Performance Standard | Necessary repair of a painted surface that requires repair under this warranty, is to be refinished to match surrounding areas as closely as possible. |
| Responsibility | Builder will finish repair areas as indicated. |
| l.) Possible Deficiency | Deterioration of varnish or lacquer finishes. |
| Performance Standard | Natural finishes on interior woodwork should not deteriorate during the first year of ownership. However, varnish type finishes used on the exterior will deteriorate rapidly and are not covered by the warranty. |
| Responsibility | Builder will refinish affected areas of natural finish interior woodwork, matching the color as closely as possible. |
| m.) Possible Deficiency | Peeling of wall covering. |
| Performance Standard | Peeling wall covering should not occur unless it is due to owner's abuse or negligence. |
| Responsibility | Builder will repair or replace defective wall covering applications. |
| n.) Possible Deficiency | Open carpet seams. |
| Performance Standard | Carpet seams will show. However, no visible gap is acceptable. |
| Responsibility | Builder will correct. |



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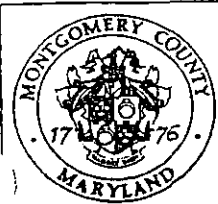
- o.) Possible Deficiency** **Carpeting becomes loose, seams separate or stretching occurs.**
- Performance Standard Wall to wall carpeting, installed by the builder as the primary floor covering, when stretched and secured properly should not come up, become loose, or separate from its point of attachment.
- Responsibility Builder will re-stretch or re-secure carpeting as needed.

- p.) Possible Deficiency** **Cracks in exterior stucco wall surfaces.**
- Performance Standard Hairline cracks are not unusual in exterior stucco wall surfaces. Cracks greater than 1/8 inch in width or spalling of the finish surface are to be repaired.
- Responsibility Builder will correct.

- q.) Possible Deficiency** **Inadequate interior paint application and coverage.**
- Performance Standard Interior paint is to be applied in a manner sufficient to visually cover wall, ceiling and trim surfaces.
- Responsibility The builder will repaint wall, ceiling or trim surfaces where inadequate paint has been applied. Where a large area is affected, the entire surface should be repainted. The extent of builder's responsibility to repaint the entire wall will be decided, if necessary, by dispute settler.

(viii) STANDARDS CONCERNING SPECIALTY ITEMS

- a.) Possible Deficiency** **Inadequate ventilation of attics and crawl spaces.**
- Performance Standard Attic and crawl spaces are to be ventilated as required by the approved building code.
- Responsibility The builder will provide for adequate ventilation.



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- b.) Possible Deficiency** **Fireplace or chimney does not draw properly.**
- Performance Standard A properly designed and constructed fireplace and chimney should function properly. It is normal to expect that high winds can cause temporary negative draft situations. Similar negative draft situations can also be caused by obstructions such as large branches of trees too close to the chimney.
- Responsibility Builder will determine the cause of the malfunction and correct if the problem is one of design or construction of the fireplace.

- c.) Possible Deficiency** **Chimney separation from structure to which it is attached.**
- Performance Standard Newly built fireplace will often incur slight amounts of separation. Separation should not exceed 1/2 inch from the main structure in any 10 foot vertical measurement.
- Responsibility Builder will determine the cause of separation and correct if standard has not been met. Caulking is acceptable.

(ix) STANDARDS CONCERNING MISCELLANEOUS ITEMS

- a.) Possible Deficiency** **Surface cracks, joint delaminations and chips in high pressure laminates of vanity and kitchen cabinet countertops.**
- Performance Standard Countertops fabricated with high pressure laminate coverings should not delaminate, crack or chip.
- Responsibility Builder will repair or replace coverings if reported on a pre-closing walk through inspection report. However, if a pre-closing inspection was not performed, the builder will correct when notified by owner.



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b.) Possible Deficiency Kitchen cabinets and vanities, cabinet doors, drawers and other operating parts that do not function as designed.

Performance Standard Kitchen cabinets and vanities, cabinet doors, drawers and other operating parts should function as designed.

Responsibility Builder will repair or replace operating parts.

c.) Possible Deficiency Warping of kitchen and vanity cabinet doors and drawer fronts.

Performance Standard Warpage must not exceed $\frac{1}{4}$ inch as measured from the face of the cabinet frame to the furthestmost point of warpage on the drawer or door front in a closed position.

Responsibility Builder will correct or replace doors or drawer fronts as required.

b. Two Year Warranty

(i) PLUMBING

a.) Possible Deficiency Water supply system fails to deliver water or pressure is too low.

Performance Standard All on-site service connections to municipal water main and private water supply is the builder's responsibility.

Responsibility Builder will repair if failure is the result of defective workmanship or materials.

b.) Possible Deficiency Septic system fails to operate properly.

Performance Standard Septic system will function adequately during all seasons, under climatic conditions that are normal or reasonably anticipated, based on local records for the location of the home. Septic systems shall be designed and installed to comply with applicable State laws.



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Responsibility

Builder will repair, or otherwise correct, a malfunctioning or non-operating system. If failure is caused by inadequate design, faulty installation, or other cause relating to actions of the builder or contractors or subcontractors under the builder's control. Builder will not be responsible for system malfunction or damage which is caused by owner negligence, lack of system maintenance, or other causes attributable to actions of the owner or owner's contractors, not under the control of the builder; including, but not necessarily limited to; the addition of fixtures, items of equipment appliances or other sources of waste or water to the plumbing system served by the septic system; and damage, or changes to the septic system installation or surrounding soil conditions critical to the system's functioning.

c.) Possible Deficiency

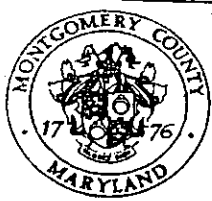
Plumbing pipes freeze and burst.

Performance Standard

Drain, waste and water pipes are to be adequately protected to prevent freezing during normally anticipated cold weather.

Responsibility

Builder will correct condition responsible for pipes freezing, repair damaged piping, and repair any damage directly attributable to the freezing. It is the owner's responsibility to drain or otherwise protect lines and exterior faucets commonly exposed to freezing temperatures. The owner is also responsible for maintaining suitable temperatures in the home as a safeguard against freezing pipes.



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- d.) Possible Deficiency** **Faucet or valve leak.**
- Performance Standard A valve or faucet leak due to material or workmanship is a deficiency.
- Responsibility Builder will repair or replace the leaking faucet or valve.
- e.) Possible Deficiency** **Leakage from any piping.**
- Performance Standard No leaks of any kind are to be present in any sanitary soil, waste vent or water piping. Condensation on piping does not constitute leakage, and is not covered except where pipe insulation is required.
- Responsibility Builder will make repairs to eliminate leakage.
- f.) Possible Deficiency** **Defective plumbing fixtures, appliances or trim fittings.**
- Performance Standard Fixtures, appliances or fittings will function as designed.
- Responsibility Builder will replace any defective fixture, fitting or appliance that does not meet acceptable standards.
- g.) Possible Deficiency** **Noisy water pipes.**
- Performance Standard There will be some noise due to the flow of water emitting from the water pipe system. However, "water hammer" is to be eliminated.
- Responsibility Builder cannot remove all noises due to water flow and pipe expansion. Builder will correct to eliminate "water hammer."



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h.) Possible Deficiency

Performance Standard

Responsibility

Stopped up sewers, fixtures and drains.

Sewers, fixtures and drains will operate properly.

Builder will not be responsible for sewers, fixtures and drains that are clogged through homeowner negligence. If a problem occurs, the homeowner should consult builder for a proper course of action. Where defective construction is shown to be the cause, builder will assume the cost of the repair; where homeowner negligence is shown to be the cause, the homeowner will assume all repair costs.

i.) Possible Deficiency

Performance Standard

Responsibility

Refrigerant lines break.

Refrigerant lines should not develop leaks during normal operation.

Builder will repair leaking refrigerant lines and re-charge unit as required.

(ii) MECHANICAL

a.) Possible Deficiency

Performance Standard

Responsibility

Inadequate heating.

Heating system is to be capable of producing an inside temperature of 70 degrees F, as measured in the center of each room at a height of 5 feet above the floor, when temperature outdoors is 0 degrees and above without unreasonable fuel consumption. Federal, state or local energy codes supersede ASHRAE standards where such codes have been locally adopted.

Builder will correct heating system to provide the required temperatures.



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b.) Possible Deficiency

Performance Standards

Inadequate cooling.

Where air-conditioning is provided, the cooling system is to be capable of maintaining a temperature of 78 degrees F, as measured in the center of each room at a height of 5 feet above the floor, under local outdoor summer design conditions as specified in ASHRAE handbook without unreasonable fuel consumption. In the case of outside temperature exceeding 95 degrees F without unreasonable fuel consumption, a differential of 15 degrees F from the outside temperature will be maintained. Federal, state, or local energy codes supersede this standard where such codes have been locally adopted.

Responsibility

Builder will correct cooling system to meet temperature conditions.

c.) Possible Deficiency

Performance Standard

Improper mechanical equipment operation of evaporative cooling system.

Equipment should function properly at temperature standard set without unreasonable fuel consumption.

Responsibility

Builder will correct and adjust so that blower and water system operate as designed.

d.) Possible Deficiency

Performance Standard

Noisy ductwork.

When metal is heated, it expands and when cooled, it contracts. The result is "ticking" or "crackling" which is generally to be expected.

Responsibility

None.



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e.) Possible Deficiency

Performance Standard

Responsibility

Oilcanning.

The stiffening of the ductwork and the gauge of the metal used should be such that ducts do not "oilcan." The booming noise caused by "oilcanning" is not acceptable.

Builder will correct to eliminate this sound.

f.) Possible Deficiency

Performance Standard

Responsibility

Ductwork separates or become unattached.

Ductwork should remain intact and securely fastened.

Builder will re-attach and re-secure all separated or unattached ductwork.

(iii) ELECTRICAL

a.) Possible Deficiency

Performance Standard

Responsible

Fuses blow or circuit breakers "kick out."

Fuses and circuit breakers that deactivate under normal usage, when reset or replaced, is a deficiency.

Builder will check wiring circuits for conformity with local, state, or approved national electrical code requirements. Builder will replace wiring or breaker if it does not perform adequately or is defective.

b.) Possible Deficiency

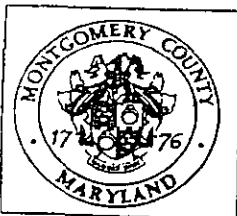
Performance Standard

Responsibility

Malfunction of electrical outlets, switches or fixtures.

All switches, fixtures and outlets should operate as intended.

Builder will repair or replace defective switches, fixtures and outlets.



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c.) Possible Deficiency

Performance Standard

Ground fault interrupter trips frequently.

Ground fault interrupters are sensitive safety devices installed into the electrical system to provide protection against electrical shock. These sensitive devices can be tripped very easily. Ground fault interrupters are required in outlets located in the kitchen, bath, and powder rooms along with all exterior outlets. Ground fault outlets should operate as intended.

Responsibility

Builder will install ground fault interrupter in accordance with approved electrical code. Builder will replace the device if found to be defective and make other necessary corrections to the electrical system.

d.) Possible Deficiency

Performance Standard

Failure of wiring to carry its designed circuit load to switches and receptacles.

Wiring should be capable of carrying the designed load for normal residential use.

Responsibility

Builder will check wiring for conformity with local, state, or approved national electrical code requirements. Builder will replace wiring if it fails to carry the design load.

c. Ten Year Warranty

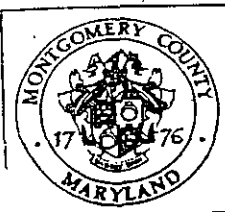
A "Major Structural Defect" is actual physical damage to the following designated load-bearing portions of the home caused by failure of such load-bearing portions that affects their load-bearing functions to the extent that the home becomes unsafe, unsanitary or otherwise unlivable by Community Standards.

(i) Foundation systems and footings;

(ii) Beams;

(iii) Girders;

(iv) Lintels;



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- (v) Columns;
- (vi) Walls and partitions;
- (vii) Floor systems; and
- (viii) Roof framing systems.

Repair of a Major Structural Defect includes: repair of damage to the load-bearing elements of the home themselves that is necessary to restore their load-bearing ability; and any consequential damage to real property as a result of such a structural defect or the repair of such a defect.

d. Exclusions from warranty coverage:

- (i) Defects in outbuildings, including detached garages and detached carports, except outbuildings which contain the plumbing, electrical, heating, cooling or ventilation systems serving the home; swimming pools and other recreational facilities; driveways; walkways; boundary walls; retaining walls; bulkheads; fences; landscaping, including sodding, seeding, shrubs, trees, and plantings; off-site improvement or any other improvements not a part of the home itself.
- (ii) Damage to real property which is not part of the home covered by the warranty and which is not included in the purchase price of the home.
- (iii) Any damage to the extent it is caused or made worse by:
 - a.) negligence, improper maintenance or improper operations by anyone other than the Builder or its employees, agents, or subcontractors;
 - b.) failure by the owner to give notice to the builder of any defects within the times required under these regulations;
 - c.) changes, alterations, or additions made to the home by anyone before or after initial occupancy, except those performed by the builder, or its employees, agents, or subcontractors acting in their capacity as employees, agents, or subcontractors of the builder; or
 - d.) changes of the grading of the ground by anyone other than the builder, its employees, agents, or subcontractors.



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- (iv) Any defect in materials or work, including but not limited to items shown on any "Addendum" supplied by or caused by anyone other than the builder, or its employees, agents, or subcontractors. The builder will, however, be responsible for any defects in or damage to any materials or work not installed by the builder when the defect or damage is the direct consequence of defects in materials or work installed by the builder.
- (v) Normal wear and tear or normal deterioration.
- (vi) Accidental loss or damage from acts of nature such as, but not limited to, fire, explosion, smoke, water escape, falling objects, aircraft, vehicles, Acts of God, lightning, windstorm, hail, flood, mudslide, earthquake, and changes in the level of the underground water table which are not reasonably foreseeable except to the extent that such accidental loss or damage was caused by or aggravated by defects in construction or materials.
- (vii) Any damage caused by soil movement for which compensation is provided by legislation or which is covered by other insurance.
- (viii) Insect damage. This exclusion does not apply to insect damage situations where the builder has failed to use proper materials or construction methods designed to prevent insect infestation.
- (ix) Any loss or damage that arises while the home is being used primarily for non-residential purposes.
- (x) Bodily injury.
- (xi) Any loss or damage which owner, wherever feasible, has not taken timely action to minimize or provide timely notice to the builder.
- (xii) Loss or damage due to abnormal loading of floors by owner which exceeds code requirements.



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(xiii) Consequential damages to personal property are excluded. However, consequential damages to real property as a result of a defect or repair of a defect are covered.

(xiv) Any condition that does not result in actual physical damage to the home.

- 4.10 Nothing contained in this section is intended to limit the right of any builder to offer a warranty that exceeds the specified minimum either in scope, applicability or standards.
- 4.11 The statutory warranties provided in Chapter 31C-3(d) and these regulations are in addition to all other implied or express warranties imposed by law or agreement.

Section 5. Board of Registration

- 5.1 The Board of Registration is responsible for certifying to the Director that the applicant for a builder's license and the applicant's organization are qualified to comply with the building code and laws of the County and State, and to fully perform building contracts; and that the applicant should be licensed.
- 5.2 The Board of Registration after giving the builders an opportunity for a hearing under the Administrative Procedures Act may deny, suspend, refuse to renew, or revoke the license of the builder if the builder has violated any of the provisions listed in Chapter 31C-8(b).
- 5.3 The Board must meet at least once a month at a time and place designated by the Board. If circumstances or workload dictates, more frequent meetings are recommended.
- 5.4 The Department must provide staffing for the Board.

Section 6. County New Home Warranty Security Fund

- 6.1 Each builder not participating in an approved alternate new home warranty security program must contribute to the County an amount equal to 0.3 of one percent of the purchase price of the home. In the event there is no good faith sale of the home, the fair market value of the home on its completion date will be the base upon which the fee will be calculated.



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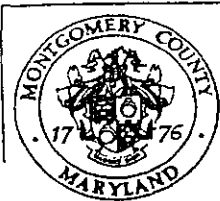
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- 6.2 Each payment must be given to the Department at least 10 days prior to the date of settlement or occupancy and must be accompanied by a completed and executed Certification of Participation on the form prescribed by the Director. The Department will validate the Certificate of Participation and return two validated copies to the builder.
- 6.3 The builder must provide the Certificate of Participation to the purchaser at settlement or occupancy, whichever first occurs, along with a statement signed by the builder that all County required inspections listed in Section 3.8 of this regulation have been performed.
- 6.4 In such instances where the Department determines that there have been an excessive number of awards against the New Home Warranty Security Fund on the part of an individual builder and the amount in the Fund is insufficient to satisfy outstanding awards and anticipated awards for the succeeding year, the Department may impose a surcharge against the builder not to exceed one percent of the purchase price of any home subsequently enrolled in the fund.
- 6.5 The Department will be responsible for depositing monies collected under this section with the Department of Finance in accordance with established procedures.
- 6.6 Failure of the builder to enroll a home in the Fund or if payment for such enrollment is returned because of insufficient funds, a late payment fee will be assessed. This late payment fee will be \$50.00 for the first 30 days, or for any part thereof, and \$500.00 for each subsequent 30 day period or part thereof.
- 6.7 In the event that a builder fails to enroll a home in the Fund, the Department will notify DPS.

Section 7. Warranty Claims – County New Home Warranty Security Fund

- 7.1 Builder responsibilities.
- a. The builder must provide to the owner, on or before the warranty date for each new home, a full statement of warrant coverage and warranty claim procedures in a form prescribed by the Director.



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- b. The builder must, on or before the warranty date, provide the owner with written notice concerning the business address to which notifications concerning alleged defects can be directed. The builder must further provide written notice by regular mail of the new address to which notifications may be directed should the business address change during the warranty period.
- c. Whenever an owner provides a builder with a written notice of defect, the builder must arrange, with the owner, a mutually agreeable time for an inspection of the defect. Unless the builder does not accept responsibility for the defect, upon completion of the inspection, but in no case later than 30 days from receipt of the notice of the defect, the builder will either correct the defect or provide the owner with a written statement *setting forth* the action he will take to correct the defect and the time by which the defect will be corrected. Except for the presence of conditions beyond the builder's control, the defect must be corrected within 60 days of receipt of the notice.

7.2 Owner responsibilities.

- a. Any owner who believes he has a covered defect must provide written notice of the nature of the defect(s) to the builder as soon as the defect is discovered but not later than 30 days after the date on which the warranty on the item expires. The notice must be mailed or delivered to the builder's business address.
- b. Upon providing written notice to the builder, the owner must allow the builder 30 days in which to respond and shall make both himself and the home available to the builder for purposes of inspection at a mutually agreeable time.
- c. If the matter cannot be resolved through the informal dispute settlement process established in 7.1(c.) and 7.2(a.) and (b.) above, the owner may file a claim with the Department. Except in the case of a claim which relates to structural problems or other emergencies, or if a builder has informed an owner that he will not repair a defect a Notice of Claim must not be filed until after the expiration of 90 days from the warranty date. The claim must state the name of the builder, the date on which the notice of defect was given to the builder, the Certificate of Participation number and a copy of the written notice of the defect.



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7.3 Administrative responsibilities of the Department.

- a. The Department, upon receipt of a claim, will designate an investigator to review the claim. The investigator will attempt to conciliate the dispute.
- b. If the owner and the builder cannot conciliate the matter within 45 days of the filing of a claim, or do not comply with an agreement reached as a result of such conciliation, the owner or the builder may submit a request for a dispute settler to handle the claim.

7.4 The Department must maintain a list of qualified dispute settlers to review the validity of claims and the extent of builder responsibility if any.

7.5 Dispute Settler procedures.

- a. Upon receipt of a request from the builder or the owner for a dispute settler to handle the claim, the Department will assign a dispute settler to the claim.
- b. The dispute settler will be responsible for contacting the parties and arranging for an inspection of the claimed warranted item(s) within 15 days of receiving the claim. If the dispute settler has difficulty arranging an inspection, the Department will set a date and time.
- c. The dispute settler will determine if the builder is responsible for correction of the warranted item(s) and the extent of the defect. The dispute settler will submit his decision within 10 days after the dispute settler's inspection on a form prescribed by the Director to the Department. A copy of the decision will be given to the builder and the owner.
- d. Upon receipt of the dispute settler's decision, the builder will have 30 days to correct all warranted item(s) designated by the dispute settler, unless the dispute settler says that additional time should be given.
- e. If the builder is unable or refuses to make the necessary repairs within the 30 day time period or other time period allotted by the dispute settler, the dispute settler



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must determine the exact amount of the award to be paid out of the fund to the owner. The determination of the amount of the award will be based on actual bids obtained by the owner. The reasonableness of the bids obtained will be determined by the dispute settler.

- 7.6 The Department will submit a request for payment from the Fund to the Department of Finance. The Department of Finance will issue a check made payable to the owner. Before the Department can release the check to the owner, the owner must certify to the Department that the funds will be used to repair the warranted item(s). Failure by the owner to make repairs may invalidate the warranty.
- 7.7 The builder is bound by the decision of the dispute settler. When The Department of Finance makes a payment from the Fund, the Director may take action against the builder to recover the amount of the total claim plus interest in accordance with the Chapter.
- 7.8 Payment from the fund does not limit the availability of other legal or equitable remedies to the owner.
- 7.9 The decision rendered by the dispute settler in accordance with Section 7.5 may be appealed by a builder. In order for a builder to exercise such an appeal, the builder must first comply with the dispute settler's decision and then post an appeal fee of \$250.00 with the Department. The request for an appeal must be made within ten (10) days of the receipt of the dispute settler's decision. The appeal will be decided by a dispute settlement appeals panel consisting of two dispute settlers from the Department's list of dispute settlers and a member of the Board of Registration. The Department will select the two dispute settlers and the Board of Registration will select its representative. This panel will review the claim and the dispute settler's decision and render a decision either upholding or reversing it. If the panel finds for the builder, the cost involved in correcting the defect will be reimbursed to the builder by the Fund along with the appeal fee. If the panel upholds the dispute settler's decision, the builder forfeits the appeal fee.



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Section 8. Alternate New Home Warranty Security Plans

- 8.1 Any person wishing to constitute and establish a private Alternate New Home Warranty Security Plan may apply to the Department for approval as provided for in these regulations.
- 8.2 In order to receive or maintain approval, an alternate private plan must conform to all the requirements of this Section.
- a. An alternate plan must provide financial security adequate to cover the total amount of claims that the program may reasonably anticipate to be filed against participating builders and adequate to cover the costs of operating the plan.
 - b. No alternate plan can require any payment by an owner at any time subsequent to the warranty date as a condition of maintaining in effect the warranty required to be given under 31C-3.
 - c. An alternate plan must provide a complaint, claims and payment procedure which:
 - (i) provides for an attempt at a good faith informal settlement of any claim arising out of the warranty between the builder and the owner and requires that any owner desiring to make a claim provide written notice of the complaint to the builder's place of business and to the alternate private plan.
 - (ii) provides for dispute settlement of any warranty claim dispute by an independent third party.
 - (iii) provides the owner with an opportunity to accept or reject any part of the dispute settler's decision and notice of the opportunity to appeal that decision to a court of competent jurisdiction. If any part of the dispute settler's decision is accepted by the owner, the owner is entitled to have those items repaired by the designated party.
 - (iv) adheres to the timelines set forth in Sections 7.1 and 7.2 of these Executive Regulations for the settlement of warranty claims.



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- d. Alternate plans must provide the owner written materials detailing warranty coverage and the claims and dispute settlement procedures utilized, expressing in plain language the scope, applicability and standards for the warranty and the forms, procedures and processes involved in making a claim under the warranty.
- e. If applicable, alternate plans must maintain such records as the Department may require, including but not limited to the following.
 - (i) Once every three months, a report showing the names, addresses and builder registration numbers of any new builders admitted to coverage.
 - (ii) Within ten days after a private plan discontinues the enrollment of a builder, all alternate plans must notify the Department in all cases where a builder's enrollment has been terminated and shall provide sufficient information on the cause of termination.
- f. The alternate plan will disclose in writing to the Department, once every three (3) months, each warranty claim and circumstances surrounding each warranty claim filed by an owner that is not resolved to the owner's satisfaction. This information will include, at a minimum, the following:
 - (i) owner's name, address, and phone number;
 - (ii) builder's name;
 - (iii) nature of warranty item; and
 - (iv) decision rendered by the plan.
- g. The alternate plan must document for the Department, in writing, all procedures taken to collect warranty premiums from enrolled builders negligent in such payment. Such documentation will include the following steps.
 - (i) The alternate plan must notify the enrolled builder immediately upon the discovery of any failure to pay such premium and must give such builder not more than ten days in which to pay. The alternate plan will notify the Department of the failure of any builder to remit such premium.



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- (ii) The alternate plan must periodically, at least once every six months, investigate all homes constructed by an enrolled builder to determine instances of non-payment of warranty premiums or non-enrollment of home. The alternate plan will report its finding to the Department within 10 days of such investigations.
- h. If applicable, once every 12 months, an annual report showing the number of builders participating, the number of homes covered in each of these categories; first year, second year, third through tenth years, the total number and total amount of claims paid during the reporting period and the total amount of funds available to pay such claims. The interim information required in Section 8.2(e), (f.) and (g.) is to be combined and included as part of the annual report.
- i. The alternate plan must have a warranty guarantor that conforms to the following requirements.
 - (i) If applicable, the warranty guarantor must furnish to the Department satisfactory evidence that the form of any insurance policy used to provide coverage for the alternate plan has been approved by the Maryland Department of Insurance with respect to its compliance with the provisions of State insurance law.
 - (ii) The terms and conditions of any agreement between the warranty administrator and the warranty guarantor insuring the alternate plan or other financial arrangement providing for payment of claims will be subject to approval by the Department with respect to the warranties required to be provided. Such terms and conditions must not be changed without the prior consent of the Department.
 - (iii) The warranty guarantor must agree to provide the Department information concerning the settlement of claims.

8.3 Applicants for approval of an alternate plan must submit a written application in letter form, the required fee of \$2,000 and any additional information the Department may require. The fee is non-refundable.



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8.4 Each application for approval must contain all information that may be necessary to determine that the plan, if approved, will conform to the requirements established by Chapter 31C of the Montgomery County Code and these regulations. This information must include, but not be limited to the following.

a. Warranty Guarantor:

- (i) The name, full street and postal address and telephone number of the warranty guarantor; and
- (ii) The documents concerning the qualifications of the warranty guarantor, as required by Section 8.2(i.) of these regulations.

b. Warranty Administrator

- (i) The name, full street and postal address and telephone number of the warranty administrator, if different, from the warranty guarantor;
- (ii) A copy of the Certificate of Incorporation if the warranty administrator is a corporation, a copy of the partnership agreement if the warranty administrator is a general or limited partnership; other business organization papers if organized under another form; and
- (iii) The names, addresses and positions of all principals of the corporation, partnership or other type of business entity and the percent of interest held by each.

c. The name, full street and postal address of the agents for service of process for the warranty guarantor and warranty administrator. The agents must be residents of the State of Maryland, or a corporation licensed to do business in Maryland.

d. Specific information in narrative form on the division of responsibility between the builder and the warranty guarantor for the processing and satisfaction of claims under the alternate plan.



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e. Rate schedule and charges.

- (i) A statement as to the extent and nature of deductibles, including a justification for any amounts charged to an owner, builder or the warranty administrator. The Department will make a final determination as to the reasonableness of the amount and nature of any such deductible.
- (ii) The rate schedule of charges or fees, if any, by the warranty administrator for builder membership in the alternate plan.
- (iii) A complete breakdown of proposed plan expenses for the warranty administrator, expressed in percent of the total premium dollars collected, including but not limited to expenses for overhead costs, advertising, dispute settlement services, claims processing, etc.

f. Financial security.

- (i) A certified, audited financial statement of income and expense for the warranty administrator, showing assets and liabilities for the fiscal year directly preceding the date of the application; an estimated statement of income and expenses for the current fiscal year; and a certified statement of assets and liabilities as of the date of the application.
- (ii) A full description of the manner by which financial security is assured and through which sufficient funds to pay all claims that may be reasonably anticipated are available. The procedures for receipt of premiums and other funds shall be included.
- (iii) A written affirmation that the alternate plan is financially able to respond, in a manner required by Chapter 31C of the Montgomery County Code, to all valid warranty claims that may be reasonably anticipated to be filed. The alternate plan will provide documentation substantiating the reasonableness of this level of claims.



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- g. A full description of the complaint/claims process proposed for use by the alternate plan that clearly specifies the respective responsibilities of the warranty administrator and the warranty guarantor, if different entities. The description must include all time limits established for action by any party.
- h. Copy, samples and submissions.
 - (i) Final copy of samples of the notice of warranty, claim forms, and dispute settlement procedures. The name and address of the agency or agencies that will provide dispute settlement services for the alternate plan must be included and a full description of the manner in which dispute settlement will be conducted.
 - (ii) Final copy samples of any contractual agreements between member builders and the warranty administrator, including indemnification agreements, member application and all other forms.
 - (iii) Final copy samples of the owner's package, including the warranty, insurance policy and all forms used.
 - (iv) Copy of the plans for builder information program literature.
- i. A legal opinion from the plan's attorney regarding the applicability of any requirements under laws and regulations administered by the Federal Trade Commission (FTC) including the Magnuson-Moss Warranty Act and FTC consent orders.
- j. Provide an affidavit signed and notarized by the responsible parties certifying that, in the event the approval is granted to the alternate plan, the Warranty Guarantor and Warranty Administrator are fully and completely aware of all the requirements and conditions of Chapter 31C of the Montgomery County Code and its regulations. It must be further certified that they will abide by all requirements and conditions of Chapter 31C of the Montgomery County Code and its regulations.



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- 8.5 Each application for approval of an alternate plan must be accompanied by a non-refundable application fee of \$2,000.
- 8.6 Within 60 days from the date of the notice of filing, the Department must either approve or reject the application.
- 8.7 In the event the Department finds the application does not meet the requirements of Chapter 31C of the Montgomery County Code and these regulations it must issue a notice of rejection stating the reasons for the rejection.
- 8.8 Approval is valid for a period of one year from the date of approval. Applications for reapproval must be filed with the Department not later than 60 days before the expiration of the previous approval. Applications for reapproval must be accompanied by a \$2,000 fee. The Department will then review the application for renewal and if required, stipulate any conditions imposed for renewal.
- 8.9 If at any time during the period of approval any material fact stated or described in the application for approval changes, the applicant must file an amended application with the Department within 30 days after the change occurs.
- 8.10 The Director may revoke or suspend the approval for an alternate plan if, in the opinion of the Director, the alternate plan becomes financially unable to meet its obligations under the new home warranty or is administered in any way that denies the owner coverage provided in Section 31C-3 of the Act.
- 8.11 The Director may request that additional information be submitted by a private plan.



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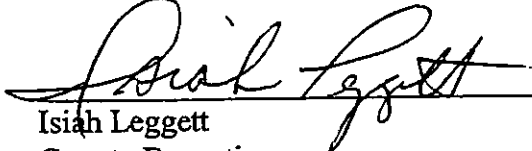
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Section 9. Severability

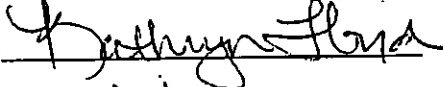
- 9.1 The provisions of these regulations are severable. If a court holds that a provision is invalid or inapplicable, the remainder of the regulation remains in effect.

Approved


Isiah Leggett
County Executive

Date: July 22, 2008

Approved as to Form and Legality
Office of the County Attorney

By: 
Date: 2/13/08



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Montgomery County Regulation on:

NEW HOME WARRANTY AND BUILDER LICENSING OFFICE OF CONSUMER PROTECTION

Issued By: County Executive
Regulation No.

Authority: Code Section 31C-14

Supersedes: Executive Regulation No. 17-02

Council Review: Method (2) under Code Section 2A-15
Register Vol. 25, Issue 4

Comment Deadline: April 30, 2008

Effective Date:

Sunset Date: None

SUMMARY:

Executive Regulation 17-02:

- (1) prescribes the form and coverage of the minimum warranty;
- (2) governs procedures for the processing of claims under the warranty;
- (3) establishes requirements for building licensing;
- (4) details procedures governing the denial, revocation, and suspension of builders' licenses; and
- (5) establishes requirements of private Alternate New Home Warranty Security Programs and of the County New Home Warranty Security Fund.

This regulation amends Executive Regulation 17-02 by increasing the fee for builder licenses.

ADDRESS:

Office of Consumer Protection
100 Maryland Avenue, Room 330, Rockville, Maryland 20850

STAFF CONTACT: Ralph L. Vines, 240-777-3636



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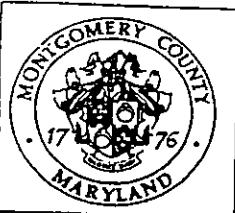
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Section 1. Preamble

- 1.1 Background information: [Chapter] Section 31C-14 of the Montgomery County Code (1984) as amended, allows the County Executive to issue regulations to implement this Chapter. This regulation sets forth the procedures for implementation of this Chapter. This regulation supersedes Executive Regulation [23-01] 17-02 and increases the licensing fee from \$[400.00] 700.00 to \$[700.00] 805.00.

Section 2. Definitions

- 2.1 Board. "Board" means the Board of Registration.
- 2.2 Builder. "Builder" means any person or business organization:
- that is engaged in the business of erecting or otherwise creating a new home; or
 - to whom a completed new home is conveyed for resale in the course of the business of the person or business organization.
- 2.3 Certificate of Participation. "Certificate of Participation" means that certificate which is issued by the [Department of Housing and Community Affairs] Office of Consumer Protection for each new home constructed by a builder participating in the County New Home Warranty Security Fund. This certificate signifies that a participating builder constructed the home and that premiums due have been paid.
- 2.4 Department. "Department" means the [Department of Housing and Community Affairs] Office of Consumer Protection.
- 2.5 Director. "Director" means the Director of the [Department of Housing and Community Affairs] Office of Consumer Protection or the Director's designee.
- 2.6 Dispute settler. "Dispute settler" means an independent contractor or inspector with building construction expertise hired by the [Department of Housing and Community Affairs] Office of Consumer Protection.
- 2.7 DPS. "DPS" means the Department of Permitting Services.



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- 2.8 Finance. "Finance" means the Department of Finance.
- 2.9 The fund. "The fund" means the New Home Warranty Security Fund, which is money contributed by builders participating in the warranty program administered by the County.
- 2.10 Load-bearing portions of the home. "Load-bearing portions of the home" means:
- a. foundation system and footings;
 - b. beams;
 - c. girders;
 - d. lintels;
 - e. columns;
 - f. walls and partitions;
 - g. floor systems; and
 - h. roof framing system.
- 2.11 Major structural defect. A "Major structural defect":
- a. means any actual damage to load-bearing portions of the home that:
 - (i) affects its load bearing function; and
 - (ii) vitally affects use of the home for residential purposes;
 - b. includes damage due to subsidence, expansion, or lateral movement of the soil; and
 - c. does not include damage caused by movement of the soil resulting from flood or earthquake.
- 2.12 New home. "New home" means every newly constructed private dwelling unit and the fixtures and structure that are made a part of a newly constructed private dwelling unit at the time of construction.



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2.13 Owner. "Owner":

- a. means any person for whom the new home is built or to whom the home is sold for residential occupancy by:

- (i) that person or the family of that person as a home; and
- (ii) the successors of that person in title to the home or mortgagee in possession;

- b. does not mean:

- (i) any development company, association, or subsidiary company of the builder; or
- (ii) any person or organization to whom the home may be conveyed by the builder for any purpose other than residential occupancy by that person or organization.

2.14 Warranty Administrator. "Warranty Administrator" means the person who is responsible for administering all or any portion of the claims resolution and defect correction process of a private plan where that person is a legal entity different from the warranty guarantor.

2.15 Warranty date. "Warranty date" means the first day that the owner occupies or settles on the new home, whichever first occurs.

2.16 Warranty Guarantor. "Warranty Guarantor" means the person responsible for financially securing the warranty required to be offered pursuant to these regulations, on behalf of a private plan. The term shall mean and shall include a warranty administrator where a separate administrator is not established.



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Section 3. Builder Licensing

- 3.1 A builder must not engage in the business of erecting or otherwise creating a new home unless licensed with the Department.
- 3.2 For the purpose of these regulations, the term "engaging in the business of erecting or otherwise creating a new home" includes constructing any new home for sale, acting as prime contractor to construct any new home for another person or advertising or holding oneself out as constructing or being available to construct a new home or homes. The term also means and includes the sale or transfer of title to a parcel of land to any person and the subsequent participation in the construction of a new home or any part of a new home by the seller or transferor. The term also includes a person who contracts with a general contractor or with subcontractors for the construction of a new home for the purpose of sale to a purchaser.
- 3.3 A person who constructs a new home for his own or his immediate family's personal use and occupancy does not require a builder's license. An individual satisfies the licensing requirement of the Chapter by signing the affidavit contained on the application for building permit issued by DPS.
- This home will not be covered by a 10 year warranty. A Certificate stating that this home is not covered by the County's 10 year statutory warranty must accompany the building permit application. This Certificate is issued by the Department.
- 3.4 Every application for licensing must be made on the form prescribed by the Director and must be accompanied by a non-refundable licensing fee of \$[700] 805. The application must provide at least the following information:

- a. Full name and address of the business.

In the case of a Corporation, the name entered on the application must be that registered with the State Department of Assessments and Taxation. In all cases, the address entered on the application must be the street number, street name, and -- -- municipality where the primary office of the applicant's business organization is located. The address cannot be a post office box or the address of an agent. The address must be that of a business office, unless there is none, in which case it may be a residence address.



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- b. If the business is a corporation, the applicant must appoint an agent for the service of process and must provide the agent's home address. The agent may be any person who is a resident of the State of Maryland.
 - c. The builder's business and home telephone numbers and the names and addresses and home phone numbers of all persons having a legal interest in the builder or the building entity.
 - d. References from at least three material suppliers, two general business references, and the name of the bank where the builder has a business account.
 - e. A summary of building experience as well as disclosure of any present or prior relationship with any other licensed builder.
 - f. Proof of participation in an approved alternate new home warranty security fund or designation of the County New Home Warranty Security Fund.
- 3.5 The Department may not issue a license to a builder who has or had any legal interest in a previously licensed firm that has or had a license revoked or suspended for any reason listed in Section 31C-8 of the Montgomery County Code. Legal interest means being responsible in whole or in part for the activities of the offending firm. However, when the previously licensed firm is a limited partnership, it will be presumed that any limited partners do not have a legal interest.
- 3.6 The Department will review each application for completeness before forwarding it to the Board of Registration for review. Incomplete applications will be returned to the applicant.
- 3.7 The Director must notify the applicant of the certification or denial of certification within 75 days after submission of a completed application.
- 3.8 A builder must provide to a purchaser at the time of occupancy or settlement, whichever first occurs, a statement signed by the builder, that the following County inspections have been performed.



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- a. footing
- b. foundation and pargeting
- c. building location plat
- d. electrical close-in
- e. building framing
- f. chimney and flue
- g. final electrical
- h. final plumbing
- i. septic system – certificate of completion
- j. well system – certificate of potability
- k. final building

- 3.9 The builder, in order to certify that this provision regarding final building inspection has been satisfied, must make a request to DPS at least five (5) days prior to settlement for a final inspection to be performed. If the final inspection has not been performed by the time of settlement, the builder must supply the homebuyer with a statement that all inspections, with the exception of the final inspection, have been performed and that the final inspection is scheduled.

Section 4. Warranty Coverage and Standards

- 4.1 The warranty specified in this section must be provided by all new home builders for new homes for which title is first transferred from builder to owner, or for which possession or occupancy is first given by builder to owner on or after July 9, 1986. Nothing in this warranty is to be construed to mean that either the County Warranty Security Fund or an alternate private warranty plan is responsible for guaranteeing the completion of a home in the event of builder bankruptcy before settlement occurs on the home. In addition, the warranty provided for in these regulations will not extend to those items listed as "extras" or "upgrades" as contained in contract addenda if these items are not installed.



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- 4.2 A new home sold to or constructed for an owner shall be considered given over for occupancy when the owner is authorized to occupy under any agreement between the builder and the owner.
- 4.3 A builder who sells a model home must provide the purchaser of the model home with the ten year warranty prescribed in these regulations.
- 4.4 The warranty is not required to be given under the following circumstances:
- a. on a condominium unit contained within a building of more than four stories; or
 - b. on general or limited common elements in a condominium regime.
- 4.5 The warranty required by these regulations is as follows:
- a. One year warranty: the new home must be free from any defect in materials or workmanship as defined in minimum performance standards. The warranty on the following list of items extends only for one year:
 - (i) smoke detector
 - (ii) fire alarms
 - (iii) fire extinguisher
 - (iv) garage door opener
 - (v) intercom
 - (vi) security systems
 - (vii) garbage disposal
 - (viii) water softener
 - (ix) refrigerator
 - (x) freezer
 - (xi) trash compactor
 - (xii) dishwasher



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(xiii) clothes washer

(xiv) clothes dryer

(xv) ice maker

(xvi) stoves/ranges

b. Two year warranty: the new home must be free from any defect in the electrical, plumbing, heating, cooling, ventilation, and mechanical systems.

(i) Electrical System. Includes but is not necessarily limited to: all wiring, electrical boxes, circuit boards, switches, outlets, overload protector devices, and connections up to the public utility connections.

(ii) Plumbing System. Includes but is not necessarily limited to: gas supply lines and fittings, water supply, waste and vent pipes and their fittings, septic tanks and their drain fields, water, gas and sewer service piping and their extension to the property line which tie into a public utility connection or on-site well and/or sewage disposal system, valves, faucets, fixtures and trim fittings, pumps, water heater and sprinkler systems.

(iii) Heating, Ventilating, Cooling and Mechanical Systems: includes but is not necessarily limited to the following: duct work, steam, water, and refrigerant lines, registers, convectors, radiation elements, dampers, boiler, heat pump, thermostat, furnace, air conditioning equipment, exhaust fans, oil tanks and fittings, air handling equipment and air purifiers.

c. Ten year warranty: the new home must be free from any major structural defect.

4.6 Each builder will be responsible for the correction of any defect that appears during any of the warranty periods specified in this section.

4.7 The builder's responsibility in the case of a defect covered by this warranty will include removal of the defects by repair or replacement or payment of the reasonable cost of repair or replacement. The builder will choose between repair, replacement or payment. The builder's responsibility will include actual reasonable shelter expenses during repairs. In order for the dispute settler to award shelter expenses, a determination must



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be made that the repair activity renders the house either unsafe or uninhabitable during the term of the repair.

When a defect covered by this warranty is removed by repair, replacement or payment of the reasonable cost of repair or replacement, a release with respect to that specific defect will be signed by the owner and the County and delivered to the builder.

- 4.8 The builder must receive written notice of a defect on any item under the warranty not later than 30 calendar days after the date on which the warranty on that item expires.
- 4.9 For purposes of these regulations, minimum performance standards applicable to all new homes for which construction commenced subsequent to the date the regulations are approved are as follows:

a. One Year Warranty

The following standards set minimum standards that prescribe the level for quality of materials and performance in workmanship. To the extent that detailed minimum performance standards have not been enumerated, builders will construct homes in accordance with good industry practice that assures quality of materials and workmanship. Likewise, the validity of any owner's claims for which a standard has not been enumerated will be determined on the basis of good industry practice.

(i) STANDARDS CONCERNING SITEWORK

a.) Possible Deficiency	Settling of ground around foundation, utility trenches or other areas.
Performance Standard	Settling of ground around foundation walls, utility trenches or other filled areas should not interfere with water drainage from the home.
Responsibility	If the builder is required to provide final grading, builder will fill settled areas affecting proper drainage. Builder is responsible for removal and replacement of shrubs and other landscaping installed by the builder affected by placement of the fill. Grassed or landscaped areas that are



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disturbed during repair work is a defect. Builder is to restore grade, seed and landscape to meet proper condition. Landscaping added by the owner is not the responsibility of the builder.

b.) Possible Deficiency

Improper drainage of the site.

Performance Standard

The necessary grades and swales should have been established by the builder to insure proper drainage away from the home. Standing or ponding water should not remain for extended periods in the immediate area of the house after a rain, generally no more than 48 hours. The possibility of standing water after an unusually heavy rainfall should be anticipated by the owner. No grading determination shall be made while there is frost or snow on the ground, or while the ground is saturated.

Responsibility

The builder is responsible only for initially establishing the proper grades and swales. Owner is responsible for maintaining such grades and swales once they have been properly established by the builder.

(ii) STANDARDS CONCERNING CONCRETE

a.) Possible Deficiency

Basement or foundation wall cracks.

Performance Standard

Shrinkage cracks are not unusual in concrete foundation walls. Such cracks greater than 1/8 inch in width are to be repaired.

Responsibility

Builder will repair cracks in excess of 1/8 inch in width.



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b.) Possible Deficiency

Cracking basement floor.

Performance Standard

Minor cracks in concrete basement floors are normal. Cracks exceeding 3/16 inch in width or 1/8 inch in vertical displacement are to be repaired.

Responsibility

Builder will repair cracks exceeding maximum tolerances by surface patching or other methods as required.

c.) Possible Deficiency

Cracking of slab in attached garage.

Performance Standard

Cracks in garage slabs in excess of 1/4 inch in width or 1/4 inch in vertical displacement are to be repaired.

Responsibility

Builder will repair cracks exceeding maximum tolerances by surface patching or other methods as required.

d.) Possible Deficiency

Uneven concrete floor slabs.

Performance Standard

Concrete floors in rooms designed for habitability should not have pits, depressions or areas of unevenness exceeding 1/4 inch in any 32 inch measurement.

Responsibility

Builder will correct or repair to meet the Performance Standard. When applicable, surface patching is an accepted method of repair. Builder will reinstall or replace any finish flooring materials as necessary.

e.) Possible Deficiency

Cracks in concrete slab-on-grade floors with finish flooring.

Performance Standard

Cracks that rupture the finish flooring material are to be repaired.



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Responsibility

Builder will repair cracks, so as not to be readily apparent when the finish flooring material is in place. Builder will re-install or replace any finish flooring materials as necessary.

f.) Possible Deficiency

Pitting, scaling or spalling of concrete work.

Performance Standard

Concrete surfaces should not disintegrate to the extent that the aggregate is exposed and loosened under normal conditions of weathering and use.

Responsibility

Builder will take whatever corrective action necessary to repair or replace defective concrete surfaces. Builder is not responsible for deterioration caused by salt, chemicals, implements used and other factors beyond builder control.

g.) Possible Deficiency

Cracking, settling, or heaving of stoops and steps.

Performance Standard

Stoops and steps are not to settle or heave in excess of one inch in relation to the house structure. Cracks, except hairline cracks less than one eighth inch, are not acceptable in concrete stoops. A separation of up to one half inch is permitted where the stoop or steps abut the house or where an expansion strip has been installed.

Responsibility

Take whatever corrective action is required to meet acceptable standards. In a case where repair is made to the concrete surface, it is required that such repair match the adjoining surfaces as closely as possible or that the entire area be resurfaced or replaced.



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h.) Possible Deficiency

Performance Standard

Responsibility

Standing water on stoops.

Water should drain from outdoor stoops and steps. The possibility of minor water standing on stoops for a short period after rain can be anticipated.

Builder will take corrective action to assure drainage of steps and stoops.

i.) Possible Deficiency

Performance Standard

Responsibility

Excessive powdering or chalking of non-excluded concrete surfaces.

Powdering or chalking of concrete surfaces is not permissible, but should not be confused with surface dust.

The builder will take whatever corrective action is necessary to repair or resurface defective areas.

j.) Possible Deficiency

Performance Standard

Responsibility

Cracks in structurally attached patios with footing or foundation systems.

Cracks in excess of ¼ inch in width or ¼ inch in vertical displacement are considered excessive and unacceptable in structurally attached patios.

Builder to repair as required. Where cracks are caused by settlement or improper installation. Builder will replace that portion which has settled and finish to match existing surface as close as possible. Where a major portion of the patio has cracked, the entire patio will be replaced.



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(iii) STANDARDS CONCERNING MASONRY

a.) Possible Deficiency

Basement or foundation wall cracks.

Performance Standard

Small cracks not affecting structural stability are not unusual in mortar joints of masonry foundation walls. Cracks greater than 1/8 inch in width are to be repaired.

Responsibility

Builder will repair cracks in excess of 1/8 inch by pointing or patching.

b.) Possible Deficiency

Cracks in masonry walls or veneer.

Performance Standard

Small hairline cracks due to shrinkage are common in mortar joints in masonry construction. Cracks greater than 1/8 inch in width are considered excessive.

Responsibility

Builder will repair cracks in excess of performance standard by pointing or patching. Builder will not be responsible for color variation between old and new mortar, however, it should be made to match as close as possible. These repairs should be made toward the end of the first year warranty period to permit the home to stabilize and normal settlement to occur.

(iv) STANDARDS CONCERNING WOOD AND PLASTIC

a.) Possible Deficiency

Floors squeak or subfloor appears loose.

Performance Standard

Floor squeaks and loose subfloors are often temporary conditions common to new home construction, and a squeak-proof floor cannot be guaranteed.



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Responsibility

Builder will correct the problem if caused by faulty construction within reasonable repair capability. Where a finished ceiling exists under the floor, the corrective work may be attempted from the floor side. Where necessary, the builder will remove the finish floor materials to make the repair and reinstall or replace if damaged.

b.) Possible Deficiency

Uneven wood floors.

Performance Standard

Floors that are more than one quarter inch out of level within any 32 inch measurement is a deficiency. Floor slope within any room that exceeds 1/240 of the room width or length is a deficiency.

Responsibility

Builder will correct or repair to meet performance standard.

c.) Possible Deficiency

Bowed walls or ceilings.

Performance Standard

All interior and exterior walls have slight variations on their finished surfaces. Bowing of walls should not be visible so as to detract from the finished surface. Walls or ceilings bowed more than 1/4 inch within any 32 inch horizontal or vertical measurement is a deficiency.

Responsibility

Builder will repair to meet performance standard.

d.) Possible Deficiency

Out-of-plumb walls.

Performance Standard

Walls should not be more than 1/4 inch out-of-plumb for any 32 inch vertical measurement.

Responsibility

Builder will repair to meet the performance standard.



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- e.) Possible Deficiency **Poor quality of exterior trim workmanship.**
- Performance Standard Joints between exterior trim elements, including siding and masonry, should not result in open joints in excess of 3/8 inch. In all cases, the exterior trim, masonry and siding should be capable of performing its function to exclude the elements.
- Responsibility Builder will repair open joints and touch up finish coating where repaired to match what exists as close as possible. Caulking is acceptable for joints less than 1/2 inch in width.

- f.) Possible Deficiency **Delamination or deterioration of exterior siding.**
- Performance Standard Siding should not delaminate or deteriorate within manufacturer's specifications. Natural wood sidings can be expected to weather and change color as they age.
- Responsibility Builder will repair or replace as needed unless caused by owner's neglect to maintain siding properly. Repaired area should match as closely as possible in color and/or texture. The owner should be aware that the new finish may not exactly match the original surface texture or color.

(v) STANDARDS CONCERNING THERMAL AND MOISTURE PROTECTION

- a.) Possible Deficiency **Leaks in basement or in foundation/crawl space.**
- Performance Standard Leaks resulting in actual trickling of water through the walls or seeping through the floor are deficiencies. Leaks caused by changes in the landscaping installed by the owner, or failure of



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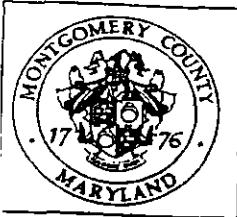
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Responsibility owner to maintain proper grades are not covered by the warranty.

- b.) Possible Deficiency** **Insufficient insulation.**
- Performance Standard** Insulation should be installed in accordance with applicable energy and building code requirements.
- Responsibility** Builder will install insulation in sufficient amounts to meet performance standard.

- c.) Possible Deficiency** **Leaks due to snow or rain driven into the attic through louvers or vents.**
- Performance Standard** Louvers and vents must not permit penetration of the elements under normal conditions. However, properly installed louvers and vents may, at times, allow penetration of rain and snow under strong conditions.
- Responsibility** Builder will correct to meet requirements of the standard.

- d.) Possible Deficiency** **Roof or flashing leaks.**
- Performance Standard** Roofs or flashings should not leak under normally anticipated conditions, except where cause is attributed to the home owner's action or failure to properly maintain.
- Responsibility** Builder will repair any roof or flashing leaks verified to have occurred under normal weather conditions.



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- e.) Possible Deficiency **Standing water on roof.**
- Performance Standard A properly pitched roof is to drain water except for minor ponding. Dead flat roofs will retain a certain amount of water. Excessive ponding of water that causes leaking of roofing material is a deficiency.
- Responsibility Builder will take corrective action to assure proper drainage of roof and will repair all leaks due to or caused by standing water.
- f.) Possible Deficiency **Delamination of veneer siding or joint separation.**
- Performance Standard All siding should be installed according to the manufacturer's and industry's accepted standards. Separations and delaminations are to be repaired or replaced.
- Responsibility Builder will repair or replace siding as needed. For surfaces requiring paint, builder will paint only the new materials. All reasonable efforts will be made to match original surface in color. The owner should be aware that the new finish may not exactly match the original surface texture or color.
- g.) Possible Deficiency **Gutters and/or downspouts leak.**
- Performance Standard Gutters and downspouts should not leak and are to be sized not to overflow during heavy rainfall.
- Responsibility Builder will repair leaks. It is the owner's responsibility to keep gutters and downspouts free of leaves and debris that could cause overflow.



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h.) Possible Deficiency

Water standing in gutters.

Performance Standard

When gutter is unobstructed by debris, the water level should not exceed $\frac{1}{2}$ inch in depth. Owner is responsible for keeping gutters and downspouts free from leaves and debris to prevent overflow.

Responsibility

Builder will correct to meet performance standards.

i.) Possible Deficiency

Leaks in exterior walls due to inadequate caulking.

Performance Standard

Joints and cracks in exterior wall surfaces and around openings are to be properly caulked to exclude the entry of water.

Responsibility

Builder will repair and/or caulk joints or cracks in exterior wall surfaces as required to correct deficiencies once. Even properly installed caulking will shrink and must be maintained by the owner.

(vi) STANDARDS CONCERNING DOORS AND WINDOWS

a.) Possible Deficiency

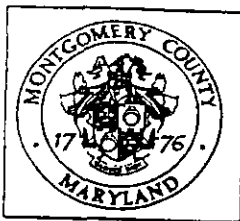
Warpage of exterior and interior doors

Performance Standard

Doors will warp to some degree. However, they should not warp to the extent that they become inoperable or cease to be weather resistant. The maximum allowable warpage is $\frac{1}{4}$ inch when measured from top to bottom.

Responsibility

Builder will correct or replace and refinish defective doors.



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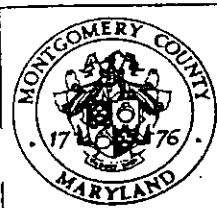
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- b.) Possible Deficiency** **Garage doors fail to operate properly under normal use.**
- Performance Standard Garage doors should operate properly and fit the door opening.
- Responsibility Builder will make necessary adjustments.
- c.) Possible Deficiency** **Garage doors allow entrance of snow or water.**
- Performance Standard Garage door should be installed as recommended by the manufacturer. Some entrance of the elements can be expected under abnormal conditions
- Responsibility Builder will adjust or correct garage doors.
- d.) Possible Deficiency** **Malfunction of windows.**
- Performance Standard Windows should operate with reasonable ease, as designed.
- Responsibility Builder will correct or repair as required.
- e.) Possible Deficiency** **Air infiltration around doors and windows.**
- Performance Standard Some infiltration is normally noticeable around doors and windows, especially during high winds. Poorly fitted weather stripping will be adjusted or replaced.
- Responsibility Builder will adjust or correct poorly fitted doors and windows, or poorly fitted weather stripping.

(vii) STANDARDS CONCERNING FINISHES

- a.) Possible Deficiency** **Cracks in interior wall and ceiling surfaces.**
- Performance Standard Hairline cracks are not unusual in interior wall and ceiling surfaces. Cracks greater than 1/8 inch in width are to be repaired.



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Responsibility

Builder will repair cracks exceeding 1/8 inch in width as required, one time only, during the first year warranty period.

b.) Possible Deficiency

Defects that appear during the first year of warranty such as nail pops, blisters in tape, or other blemishes.

Performance Standard

Slight "imperfections" such as nail pops, seam lines and cracks not exceeding 1/8 inch in width are common in gypsum wallboard installations and are considered acceptable.

Responsibility

Builder will repair cracks exceeding 1/8 inch in width.

c.) Possible Deficiency

Ceramic tile that cracks or becomes loose.

Performance Standard

Ceramic tile should not crack or become loose.

Responsibility

Builder will replace cracked tiles and secure loose tiles. In addition, builder will correct the cause of the loose or cracking tile condition. Builder will not be responsible for discontinued patterns or color variations in ceramic tile but will match as closely as possible.

d.) Possible Deficiency

Cracks appear in grouting of ceramic tile joints or at junctions with other material such as bathtub.

Performance Standard

Cracks in grouting of ceramic tile joints are commonly due to shrinking condition.

Responsibility

Builder will repair grouting as necessary, one time only. Builder will match as closely as possible. Regrouting of these cracks is a maintenance responsibility of the owner after the first year of warranty.



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e.) Possible Deficiency

Cracks developing between floor boards.

Performance Standard

Cracks in excess of 1/8 inch in width are to be corrected.

Responsibility

Builder will repair cracks in excess of 1/8 inch by filling or replacing.

f.) Possible Deficiency

Nail pops appear on the surface of resilient flooring.

Performance Standard

Readily apparent nail pops are to be repaired.

Responsibility

Builder will correct nail pops that have broken the surface. Builder will repair or replace resilient floor covering in the affected area with similar material. Extent of builder's responsibility to replace flooring to assure acceptable color matching, etc. will be decided, if necessary, by dispute settler.

g.) Possible Deficiency

Depressions or ridges appear in the resilient flooring due to subfloor irregularities.

Performance Standard

Readily apparent depressions or ridges exceeding 1/8 inch are to be repaired. The ridge or depression measurement is taken as the gap created at one end of a six-inch straightedge placed over the depression or ridge with three inches of the straightedge on one side of the defect, held tightly to the floor.

Responsibility

Builder will take corrective action, as necessary, to bring the defect within acceptable tolerance so that the affected area is not readily visible. Extent of builder's responsibility to replace flooring to assure acceptable color matching, etc. will be decided, if necessary, by dispute settler.



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- h.) Possible Deficiency** **Resilient flooring loses adhesion.**
- Performance Standard Resilient flooring should not lift, bubble or become unglued.
- Responsibility Builder will repair or replace the affected resilient flooring as required. Extent of builder's responsibility to replace flooring to assure acceptable color matching, etc. will be decided, if necessary, by dispute settler.
- i.) Possible Deficiency** **Seems or shrinkage gaps show at resilient flooring joints.**
- Performance Standard Gaps should not exceed 1/16 inch in width in resilient floor covering joints. Where dissimilar materials abut, a gap not to exceed 1/8 inch is permissible.
- Responsibility Builder will repair or replace the affected resilient flooring as required. Extent of builder's responsibility to replace flooring to assure acceptable color matching, etc. will be decided, if necessary, by dispute settler.
- j.) Possible Deficiency** **Exterior paint or stain peels, deteriorates or fades.**
- Performance Standard Exterior paints or stains should not fail during the first year warranty period. However, fading is normal and the degree is dependent on climatic conditions.
- Responsibility If paint or stain is defective, builder will properly prepare and refinish affected areas, matching color as closely as possible. Where finish deterioration affects the majority of the wall area, the extent of builder's responsibility to repaint the entire wall will be decided, if necessary, by the dispute settler.



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- k.) Possible Deficiency** **Painting required as corollary repair because of other work.**
- Performance Standard Necessary repair of a painted surface that requires repair under this warranty, is to be refinished to match surrounding areas as closely as possible.
- Responsibility Builder will finish repair areas as indicated.
- l.) Possible Deficiency** **Deterioration of varnish or lacquer finishes.**
- Performance Standard Natural finishes on interior woodwork should not deteriorate during the first year of ownership. However, varnish type finishes used on the exterior will deteriorate rapidly and are not covered by the warranty.
- Responsibility Builder will refinish affected areas of natural finish interior woodwork, matching the color as closely as possible.
- m.) Possible Deficiency** **Peeling of wall covering.**
- Performance Standard Peeling wall covering should not occur unless it is due to owner's abuse or negligence.
- Responsibility Builder will repair or replace defective wall covering applications.
- n.) Possible Deficiency** **Open carpet seams.**
- Performance Standard Carpet seams will show. However, no visible gap is acceptable.
- Responsibility Builder will correct.



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o.) Possible Deficiency

Carpeting becomes loose, seams separate or stretching occurs.

Performance Standard

Wall to wall carpeting, installed by the builder as the primary floor covering, when stretched and secured properly should not come up, become loose, or separate from its point of attachment.

Responsibility

Builder will re-stretch or re-secure carpeting as needed.

p.) Possible Deficiency

Cracks in exterior stucco wall surfaces.

Performance Standard

Hairline cracks are not unusual in exterior stucco wall surfaces. Cracks greater than 1/8 inch in width or spalling of the finish surface are to be repaired.

Responsibility

Builder will correct.

q.) Possible Deficiency

Inadequate interior paint application and coverage.

Performance Standard

Interior paint is to be applied in a manner sufficient to visually cover wall, ceiling and trim surfaces.

Responsibility

The builder will repaint wall, ceiling or trim surfaces where inadequate paint has been applied. Where a large area is affected, the entire surface should be repainted. The extent of builder's responsibility to repaint the entire wall will be decided, if necessary, by dispute settler.

(viii) STANDARDS CONCERNING SPECIALTY ITEMS

a.) Possible Deficiency

Inadequate ventilation of attics and crawl spaces.

Performance Standard

Attic and crawl spaces are to be ventilated as required by the approved building code.

Responsibility

The builder will provide for adequate ventilation.



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- b.) Possible Deficiency** **Fireplace or chimney does not draw properly.**
- Performance Standard A properly designed and constructed fireplace and chimney should function properly. It is normal to expect that high winds can cause temporary negative draft situations. Similar negative draft situations can also be caused by obstructions such as large branches of trees too close to the chimney.
- Responsibility Builder will determine the cause of the malfunction and correct if the problem is one of design or construction of the fireplace.
- c.) Possible Deficiency** **Chimney separation from structure to which it is attached.**
- Performance Standard Newly built fireplace will often incur slight amounts of separation. Separation should not exceed ½ inch from the main structure in any 10 foot vertical measurement.
- Responsibility Builder will determine the cause of separation and correct if standard has not been met. Caulking is acceptable.

(ix) STANDARDS CONCERNING MISCELLANEOUS ITEMS

- a.) Possible Deficiency** **Surface cracks, joint delaminations and chips in high pressure laminates of vanity and kitchen cabinet countertops.**
- Performance Standard Countertops fabricated with high pressure laminate coverings should not delaminate, crack or chip.
- Responsibility Builder will repair or replace coverings if reported on a pre-closing walk through inspection report. However, if a pre-closing inspection was not performed, the builder will correct when notified by owner.



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b.) Possible Deficiency

Kitchen cabinets and vanities, cabinet doors, drawers and other operating parts that do not function as designed.

Performance Standard

Kitchen cabinets and vanities, cabinet doors, drawers and other operating parts should function as designed.

Responsibility

Builder will repair or replace operating parts.

c.) Possible Deficiency

Warping of kitchen and vanity cabinet doors and drawer fronts.

Performance Standard

Warpage must not exceed ¼ inch as measured from the face of the cabinet frame to the furthestmost point of warpage on the drawer or door front in a closed position.

Responsibility

Builder will correct or replace doors or drawer fronts as required.

b. Two Year Warranty

(i) PLUMBING

a.) Possible Deficiency

Water supply system fails to deliver water or pressure is too low.

Performance Standard

All on-site service connections to municipal water main and private water supply is the builder's responsibility.

Responsibility

Builder will repair if failure is the result of defective workmanship or materials.

b.) Possible Deficiency

Septic system fails to operate properly.

Performance Standard

Septic system will function adequately during all seasons, under climatic conditions that are normal or reasonably anticipated, based on local records for the location of the home. Septic systems shall be designed and installed to comply with applicable State laws.



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Responsibility

Builder will repair, or otherwise correct, a malfunctioning or non-operating system. If failure is caused by inadequate design, faulty installation, or other cause relating to actions of the builder or contractors or subcontractors under the builder's control. Builder will not be responsible for system malfunction or damage which is caused by owner negligence, lack of system maintenance, or other causes attributable to actions of the owner or owner's contractors, not under the control of the builder; including, but not necessarily limited to; the addition of fixtures, items of equipment appliances or other sources of waste or water to the plumbing system served by the septic system; and damage, or changes to the septic system installation or surrounding soil conditions critical to the system's functioning.

c.) Possible Deficiency

Plumbing pipes freeze and burst.

Performance Standard

Drain, waste and water pipes are to be adequately protected to prevent freezing during normally anticipated cold weather.

Responsibility

Builder will correct condition responsible for pipes freezing, repair damaged piping, and repair any damage directly attributable to the freezing. It is the owner's responsibility to drain or otherwise protect lines and exterior faucets commonly exposed to freezing temperatures. The owner is also responsible for maintaining suitable temperatures in the home as a safeguard against freezing pipes.

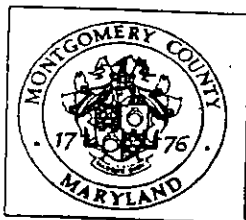


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- d.) Possible Deficiency** **Faucet or valve leak.**
- Performance Standard A valve or faucet leak due to material or workmanship is a deficiency.
- Responsibility Builder will repair or replace the leaking faucet or valve.
- e.) Possible Deficiency** **Leakage from any piping.**
- Performance Standard No leaks of any kind are to be present in any sanitary soil, waste vent or water piping. Condensation on piping does not constitute leakage, and is not covered except where pipe insulation is required.
- Responsibility Builder will make repairs to eliminate leakage.
- f.) Possible Deficiency** **Defective plumbing fixtures, appliances or trim fittings.**
- Performance Standard Fixtures, appliances or fittings will function as designed.
- Responsibility Builder will replace any defective fixture, fitting or appliance that does not meet acceptable standards.
- g.) Possible Deficiency** **Noisy water pipes.**
- Performance Standard There will be some noise due to the flow of water emitting from the water pipe system. However, "water hammer" is to be eliminated.
- Responsibility Builder cannot remove all noises due to water flow and pipe expansion. Builder will correct to eliminate "water hammer."



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h.) Possible Deficiency

Performance Standard

Responsibility

Stopped up sewers, fixtures and drains.

Sewers, fixtures and drains will operate properly.

Builder will not be responsible for sewers, fixtures and drains that are clogged through homeowner negligence. If a problem occurs, the homeowner should consult builder for a proper course of action. Where defective construction is shown to be the cause, builder will assume the cost of the repair; where homeowner negligence is shown to be the cause, the homeowner will assume all repair costs.

i.) Possible Deficiency

Performance Standard

Responsibility

Refrigerant lines break.

Refrigerant lines should not develop leaks during normal operation.

Builder will repair leaking refrigerant lines and re-charge unit as required.

(ii) MECHANICAL

a.) Possible Deficiency

Performance Standard

Responsibility

Inadequate heating.

Heating system is to be capable of producing an inside temperature of 70 degrees F, as measured in the center of each room at a height of 5 feet above the floor, when temperature outdoors is 0 degrees and above without unreasonable fuel consumption. Federal, state or local energy codes supersede ASHRAE standards where such codes have been locally adopted.

Builder will correct heating system to provide the required temperatures.



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- b.) Possible Deficiency** **Inadequate cooling.**
- Performance Standards Where air-conditioning is provided, the cooling system is to be capable of maintaining a temperature of 78 degrees F, as measured in the center of each room at a height of 5 feet above the floor, under local outdoor summer design conditions as specified in ASHRAE handbook without unreasonable fuel consumption. In the case of outside temperature exceeding 95 degrees F without unreasonable fuel consumption, a differential of 15 degrees F from the outside temperature will be maintained. Federal, state, or local energy codes supersede this standard where such codes have been locally adopted.
- Responsibility Builder will correct cooling system to meet temperature conditions.
- c.) Possible Deficiency** **Improper mechanical equipment operation of evaporative cooling system.**
- Performance Standard Equipment should function properly at temperature standard set without unreasonable fuel consumption.
- Responsibility Builder will correct and adjust so that blower and water system operate as designed.
- d.) Possible Deficiency** **Noisy ductwork.**
- Performance Standard When metal is heated, it expands and when cooled, it contracts. The result is "ticking" or "crackling" which is generally to be expected.
- Responsibility None.



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e.) Possible Deficiency

Oilcanning.

Performance Standard

The stiffening of the ductwork and the gauge of the metal used should be such that ducts do not "oilcan." The booming noise caused by "oil canning" is not acceptable.

Responsibility

Builder will correct to eliminate this sound.

f.) Possible Deficiency

Ductwork separates or become unattached.

Performance Standard

Ductwork should remain intact and securely fastened.

Responsibility

Builder will re-attach and re-secure all separated or unattached ductwork.

(iii) ELECTRICAL

a.) Possible Deficiency

Fuses blow or circuit breakers "kick out."

Performance Standard

Fuses and circuit breakers that deactivate under normal usage, when reset or replaced, is a deficiency.

Responsible

Builder will check wiring circuits for conformity with local, state, or approved national electrical code requirements. Builder will replace wiring or breaker if it does not perform adequately or is defective.

b.) Possible Deficiency

Malfunction of electrical outlets, switches or fixtures.

Performance Standard

All switches, fixtures and outlets should operate as intended.

Responsibility

Builder will repair or replace defective switches, fixtures and outlets.



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c.) Possible Deficiency

Performance Standard

Ground fault interrupter trips frequently.

Ground fault interrupters are sensitive safety devices installed into the electrical system to provide protection against electrical shock. These sensitive devices can be tripped very easily. Ground fault interrupters are required in outlets located in the kitchen, bath, and powder rooms along with all exterior outlets. Ground fault outlets should operate as intended.

Responsibility

Builder will install ground fault interrupter in accordance with approved electrical code. Builder will replace the device if found to be defective and make other necessary corrections to the electrical system.

d.) Possible Deficiency

Performance Standard

Failure of wiring to carry its designed circuit load to switches and receptacles.

Wiring should be capable of carrying the designed load for normal residential use.

Responsibility

Builder will check wiring for conformity with local, state, or approved national electrical code requirements. Builder will replace wiring if it fails to carry the design load.

c. Ten Year Warranty

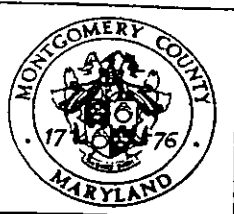
A "Major Structural Defect" is actual physical damage to the following designated load-bearing portions of the home caused by failure of such load-bearing portions that affects their load-bearing functions to the extent that the home becomes unsafe, unsanitary or otherwise unlivable by Community Standards.

(i) Foundation systems and footings;

(ii) Beams;

(iii) Girders;

(iv) Lintels;



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- (v) Columns;
- (vi) Walls and partitions;
- (vii) Floor systems; and
- (viii) Roof framing systems.

Repair of a Major Structural Defect includes: repair of damage to the load-bearing elements of the home themselves that is necessary to restore their load-bearing ability; and any consequential damage to real property as a result of such a structural defect or the repair of such a defect.

d. Exclusions from warranty coverage:

- (i) Defects in outbuildings, including detached garages and detached carports, except outbuildings which contain the plumbing, electrical, heating, cooling or ventilation systems serving the home; swimming pools and other recreational facilities; driveways; walkways; boundary walls; retaining walls; bulkheads; fences; landscaping, including sodding, seeding, shrubs, trees, and plantings; off-site improvement or any other improvements not a part of the home itself.
- (ii) Damage to real property which is not part of the home covered by the warranty and which is not included in the purchase price of the home.
- (iii) Any damage to the extent it is caused or made worse by:
 - a.) negligence, improper maintenance or improper operations by anyone other than the Builder or its employees, agents, or subcontractors;
 - b.) failure by the owner to give notice to the builder of any defects within the times required under these regulations;
 - c.) changes, alterations, or additions made to the home by anyone before or after initial occupancy, except those performed by the builder, or its employees, agents, or subcontractors acting in their capacity as employees, agents, or subcontractors of the builder; or
 - d.) changes of the grading of the ground by anyone other than the builder, its employees, agents, or subcontractors.



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- (iv) Any defect in materials or work, including but not limited to items shown on any "Addendum" supplied by or caused by anyone other than the builder, or its employees, agents, or subcontractors. The builder will, however, be responsible for any defects in or damage to any materials or work not installed by the builder when the defect or damage is the direct consequence of defects in materials or work installed by the builder.
- (v) Normal wear and tear or normal deterioration.
- (vi) Accidental loss or damage from acts of nature such as, but not limited to, fire, explosion, smoke, water escape, falling objects, aircraft, vehicles, Acts of God, lightning, windstorm, hail, flood, mudslide, earthquake, and changes in the level of the underground water table which are not reasonably foreseeable except to the extent that such accidental loss or damage was caused by or aggravated by defects in construction or materials.
- (vii) Any damage caused by soil movement for which compensation is provided by legislation or which is covered by other insurance.
- (viii) Insect damage. This exclusion does not apply to insect damage situations where the builder has failed to use proper materials or construction methods designed to prevent insect infestation.
- (ix) Any loss or damage that arises while the home is being used primarily for non-residential purposes.
- (x) Bodily injury.
- (xi) Any loss or damage which owner, wherever feasible, has not taken timely action to minimize or provide timely notice to the builder.
- (xii) Loss or damage due to abnormal loading of floors by owner which exceeds code requirements.



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(xiii) Consequential damages to personal property are excluded. However, consequential damages to real property as a result of a defect or repair of a defect are covered.

(xiv) Any condition that does not result in actual physical damage to the home.

- 4.10 Nothing contained in this section is intended to limit the right of any builder to offer a warranty that exceeds the specified minimum either in scope, applicability or standards.
- 4.11 The statutory warranties provided in Chapter 31C-3(d) and these regulations are in addition to all other implied or express warranties imposed by law or agreement.

Section 5. Board of Registration

- 5.1 The Board of Registration is responsible for certifying to the Director that the applicant for a builder's license and the applicant's organization are qualified to comply with the building code and laws of the County and State, and to fully perform building contracts; and that the applicant should be licensed.
- 5.2 The Board of Registration after giving the builders an opportunity for a hearing under the Administrative Procedures Act may deny, suspend, refuse to renew, or revoke the license of the builder if the builder has violated any of the provisions listed in Chapter 31C-8(b).
- 5.3 The Board must meet at least once a month at a time and place designated by the Board. If circumstances or workload dictates, more frequent meetings are recommended.
- 5.4 The Department must provide staffing for the Board.

Section 6. County New Home Warranty Security Fund

- 6.1 -- Each builder not participating in an approved alternate new home warranty security program must contribute to the County an amount equal to 0.3 of one percent of the purchase price of the home. In the event there is no good faith sale of the home, the fair market value of the home on its completion date will be the base upon which the fee will be calculated.



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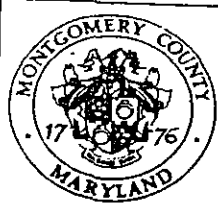
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- 6.2 Each payment must be given to the Department at least 10 days prior to the date of settlement or occupancy and must be accompanied by a completed and executed Certification of Participation on the form prescribed by the Director. The Department will validate the Certificate of Participation and return two validated copies to the builder.
- 6.3 The builder must provide the Certificate of Participation to the purchaser at settlement or occupancy, whichever first occurs, along with a statement signed by the builder that all County required inspections listed in Section 3.8 of this regulation have been performed.
- 6.4 In such instances where the Department determines that there have been an excessive number of awards against the New Home Warranty Security Fund on the part of an individual builder and the amount in the Fund is insufficient to satisfy outstanding awards and anticipated awards for the succeeding year, the Department may impose a surcharge against the builder not to exceed one percent of the purchase price of any home subsequently enrolled in the fund.
- 6.5 The Department will be responsible for depositing monies collected under this section with the Department of Finance in accordance with established procedures.
- 6.6 Failure of the builder to enroll a home in the Fund or if payment for such enrollment is returned because of insufficient funds, a late payment fee will be assessed. This late payment fee will be \$50.00 for the first 30 days, or for any part thereof, and \$500.00 for each subsequent 30 day period or part thereof.
- 6.7 In the event that a builder fails to enroll a home in the Fund, the Department will notify DPS.

Section 7. Warranty Claims – County New Home Warranty Security Fund

- 7.1 Builder responsibilities.
- a. The builder must provide to the owner, on or before the warranty date for each new home, a full statement of warrant coverage and warranty claim procedures in a form prescribed by the Director.



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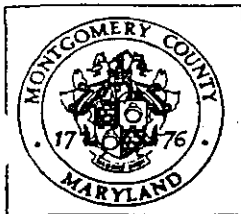
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- b. The builder must, on or before the warranty date, provide the owner with written notice concerning the business address to which notifications concerning alleged defects can be directed. The builder must further provide written notice by regular mail of the new address to which notifications may be directed should the business address change during the warranty period.
- c. Whenever an owner provides a builder with a written notice of defect, the builder must arrange, with the owner, a mutually agreeable time for an inspection of the defect. Unless the builder does not accept responsibility for the defect, upon completion of the inspection, but in no case later than 30 days from receipt of the notice of the defect, the builder will either correct the defect or provide the owner with a written statement setting forth the action he will take to correct the defect and the time by which the defect will be corrected. Except for the presence of conditions beyond the builder's control, the defect must be corrected within 60 days of receipt of the notice.

7.2 Owner responsibilities.

- a. Any owner who believes he has a covered defect must provide written notice of the nature of the defect(s) to the builder as soon as the defect is discovered but not later than 30 days after the date on which the warranty on the item expires. The notice must be mailed or delivered to the builder's business address.
- b. Upon providing written notice to the builder, the owner must allow the builder 30 days in which to respond and shall make both himself and the home available to the builder for purposes of inspection at a mutually agreeable time.
- c. If the matter cannot be resolved through the informal dispute settlement process established in 7.1(c.) and 7.2(a.) and (b.) above, the owner may file a claim with the Department. Except in the case of a claim which relates to structural problems or other emergencies, or if a builder has informed an owner that he will not repair a defect a Notice of Claim must not be filed until after the expiration of 90 days from the warranty date. The claim must state the name of the builder, the date on which the notice of defect was given to the builder, the Certificate of Participation number and a copy of the written notice of the defect.



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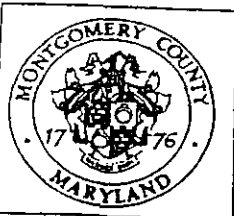
7.3 Administrative responsibilities of the Department.

- a. The Department, upon receipt of a claim, will designate an investigator to review the claim. The investigator will attempt to conciliate the dispute.
- b. If the owner and the builder cannot conciliate the matter within 45 days of the filing of a claim, or do not comply with an agreement reached as a result of such conciliation, the owner or the builder may submit a request for a dispute settler to handle the claim.

7.4 The Department must maintain a list of qualified dispute settlers to review the validity of claims and the extent of builder responsibility if any.

7.5 Dispute Settler procedures.

- a. Upon receipt of a request from the builder or the owner for a dispute settler to handle the claim, the Department will assign a dispute settler to the claim.
- b. The dispute settler will be responsible for contacting the parties and arranging for an inspection of the claimed warranted item(s) within 15 days of receiving the claim. If the dispute settler has difficulty arranging an inspection, the Department will set a date and time.
- c. The dispute settler will determine if the builder is responsible for correction of the warranted item(s) and the extent of the defect. The dispute settler will submit his decision within 10 days after the dispute settler's inspection on a form prescribed by the Director to the Department. A copy of the decision will be given to the builder and the owner.
- d. Upon receipt of the dispute settler's decision, the builder will have 30 days to correct all warranted item(s) designated by the dispute settler, unless the dispute settler says that additional time should be given.
- e. If the builder is unable or refuses to make the necessary repairs within the 30 day time period or other time period allotted by the dispute settler, the dispute settler



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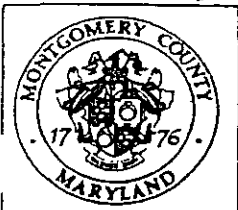
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must determine the exact amount of the award to be paid out of the fund to the owner. The determination of the amount of the award will be based on actual bids obtained by the owner. The reasonableness of the bids obtained will be determined by the dispute settler.

- 7.6 The Department will submit a request for payment from the Fund to the Department of Finance. The Department of Finance will issue a check made payable to the owner. Before the Department can release the check to the owner, the owner must certify to the Department that the funds will be used to repair the warranted item(s). Failure by the owner to make repairs may invalidate the warranty.
- 7.7 The builder is bound by the decision of the dispute settler. When The Department of Finance makes a payment from the Fund, the Director may take action against the builder to recover the amount of the total claim plus interest in accordance with the Chapter.
- 7.8 Payment from the fund does not limit the availability of other legal or equitable remedies to the owner.
- 7.9 The decision rendered by the dispute settler in accordance with Section 7.5 may be appealed by a builder. In order for a builder to exercise such an appeal, the builder must first comply with the dispute settler's decision and then post an appeal fee of \$250.00 with the Department. The request for an appeal must be made within ten (10) days of the receipt of the dispute settler's decision. The appeal will be decided by a dispute settlement appeals panel consisting of two dispute settlers from the Department's list of dispute settlers and a member of the Board of Registration. The Department will select the two dispute settlers and the Board of Registration will select its representative. This panel will review the claim and the dispute settler's decision and render a decision either upholding or reversing it. If the panel finds for the builder, the cost involved in correcting the defect will be reimbursed to the builder by the Fund along with the appeal fee. If the panel upholds the dispute settler's decision, the builder forfeits the appeal fee.



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Section 8. Alternate New Home Warranty Security Plans

- 8.1 Any person wishing to constitute and establish a private Alternate New Home Warranty Security Plan may apply to the Department for approval as provided for in these regulations.
- 8.2 In order to receive or maintain approval, an alternate private plan must conform to all the requirements of this Section.
- a. An alternate plan must provide financial security adequate to cover the total amount of claims that the program may reasonably anticipate to be filed against participating builders and adequate to cover the costs of operating the plan.
 - b. No alternate plan can require any payment by an owner at any time subsequent to the warranty date as a condition of maintaining in effect the warranty required to be given under 31C-3.
 - c. An alternate plan must provide a complaint, claims and payment procedure which:
 - (i) provides for an attempt at a good faith informal settlement of any claim arising out of the warranty between the builder and the owner and requires that any owner desiring to make a claim provide written notice of the complaint to the builder's place of business and to the alternate private plan.
 - (ii) provides for dispute settlement of any warranty claim dispute by an independent third party.
 - (iii) provides the owner with an opportunity to accept or reject any part of the dispute settler's decision and notice of the opportunity to appeal that decision to a court of competent jurisdiction. If any part of the dispute settler's decision is accepted by the owner, the owner is entitled to have those items repaired by the designated party.
 - (iv) adheres to the timelines set forth in Sections 7.1 and 7.2 of these Executive Regulations for the settlement of warranty claims.



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- d. Alternate plans must provide the owner written materials detailing warranty coverage and the claims and dispute settlement procedures utilized, expressing in plain language the scope, applicability and standards for the warranty and the forms, procedures and processes involved in making a claim under the warranty.
- e. If applicable, alternate plans must maintain such records as the Department may require, including but not limited to the following.
 - (i) Once every three months, a report showing the names, addresses and builder registration numbers of any new builders admitted to coverage.
 - (ii) Within ten days after a private plan discontinues the enrollment of a builder, all alternate plans must notify the Department in all cases where a builder's enrollment has been terminated and shall provide sufficient information on the cause of termination.
- f. The alternate plan will disclose in writing to the Department, once every three (3) months, each warranty claim and circumstances surrounding each warranty claim filed by an owner that is not resolved to the owner's satisfaction. This information will include, at a minimum, the following:
 - (i) owner's name, address, and phone number;
 - (ii) builder's name;
 - (iii) nature of warranty item; and
 - (iv) decision rendered by the plan.
- g. The alternate plan must document for the Department, in writing, all procedures taken to collect warranty premiums from enrolled builders negligent in such payment. Such documentation will include the following steps.
 - (i) The alternate plan must notify the enrolled builder immediately upon the discovery of any failure to pay such premium and must give such builder not more than ten days in which to pay. The alternate plan will notify the Department of the failure of any builder to remit such premium.



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- (ii) The alternate plan must periodically, at least once every six months, investigate all homes constructed by an enrolled builder to determine instances of non-payment of warranty premiums or non-enrollment of home. The alternate plan will report its finding to the Department within 10 days of such investigations.
 - h. If applicable, once every 12 months, an annual report showing the number of builders participating, the number of homes covered in each of these categories; first year, second year, third through tenth years, the total number and total amount of claims paid during the reporting period and the total amount of funds available to pay such claims. The interim information required in Section 8.2(e.), (f.) and (g.) is to be combined and included as part of the annual report. -
 - i. The alternate plan must have a warranty guarantor that conforms to the following requirements.
 - (i) If applicable, the warranty guarantor must furnish to the Department satisfactory evidence that the form of any insurance policy used to provide coverage for the alternate plan has been approved by the Maryland Department of Insurance with respect to its compliance with the provisions of State insurance law.
 - (ii) The terms and conditions of any agreement between the warranty administrator and the warranty guarantor insuring the alternate plan or other financial arrangement providing for payment of claims will be subject to approval by the Department with respect to the warranties required to be provided. Such terms and conditions must not be changed without the prior consent of the Department.
 - (iii) The warranty guarantor must agree to provide the Department information concerning the settlement of claims.
- 8.3 Applicants for approval of an alternate plan must submit a written application in letter form, the required fee of \$2,000 and any additional information the Department may require. The fee is non-refundable.



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8.4 Each application for approval must contain all information that may be necessary to determine that the plan, if approved, will conform to the requirements established by Chapter 31C of the Montgomery County Code and these regulations. This information must include, but not be limited to the following.

a. Warranty Guarantor:

- (i) The name, full street and postal address and telephone number of the warranty guarantor; and
- (ii) The documents concerning the qualifications of the warranty guarantor, as required by Section 8.2(i.) of these regulations.

b. Warranty Administrator

- (i) The name, full street and postal address and telephone number of the warranty administrator, if different, from the warranty guarantor;
- (ii) A copy of the Certificate of Incorporation if the warranty administrator is a corporation, a copy of the partnership agreement if the warranty administrator is a general or limited partnership; other business organization papers if organized under another form; and
- (iii) The names, addresses and positions of all principals of the corporation, partnership or other type of business entity and the percent of interest held by each.

c. The name, full street and postal address of the agents for service of process for the warranty guarantor and warranty administrator. The agents must be residents of the State of Maryland, or a corporation licensed to do business in Maryland.

d. Specific information in narrative form on the division of responsibility between the builder and the warranty guarantor for the processing and satisfaction of claims under the alternate plan.



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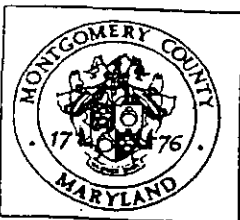
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e. Rate schedule and charges.

- (i) A statement as to the extent and nature of deductibles, including a justification for any amounts charged to an owner, builder or the warranty administrator. The Department will make a final determination as to the reasonableness of the amount and nature of any such deductible.
- (ii) The rate schedule of charges or fees, if any, by the warranty administrator for builder membership in the alternate plan.
- (iii) A complete breakdown of proposed plan expenses for the warranty administrator, expressed in percent of the total premium dollars collected, including but not limited to expenses for overhead costs, advertising, dispute settlement services, claims processing, etc.

f. Financial security.

- (i) A certified, audited financial statement of income and expense for the warranty administrator, showing assets and liabilities for the fiscal year directly preceding the date of the application; an estimated statement of income and expenses for the current fiscal year; and a certified statement of assets and liabilities as of the date of the application.
- (ii) A full description of the manner by which financial security is assured and through which sufficient funds to pay all claims that may be reasonably anticipated are available. The procedures for receipt of premiums and other funds shall be included.
- (iii) A written affirmation that the alternate plan is financially able to respond, in a manner required by Chapter 31C of the Montgomery County Code, to all valid warranty claims that may be reasonably anticipated to be filed. The alternate plan will provide documentation substantiating the reasonableness of this level of claims.



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- g. A full description of the complaint/claims process proposed for use by the alternate plan that clearly specifies the respective responsibilities of the warranty administrator and the warranty guarantor, if different entities. The description must include all time limits established for action by any party.
- h. Copy, samples and submissions.
 - (i) Final copy of samples of the notice of warranty, claim forms, and dispute settlement procedures. The name and address of the agency or agencies that will provide dispute settlement services for the alternate plan must be included and a full description of the manner in which dispute settlement will be conducted.
 - (ii) Final copy samples of any contractual agreements between member builders and the warranty administrator, including indemnification agreements, member application and all other forms.
 - (iii) Final copy samples of the owner's package, including the warranty, insurance policy and all forms used.
 - (iv) Copy of the plans for builder information program literature.
- i. A legal opinion from the plan's attorney regarding the applicability of any requirements under laws and regulations administered by the Federal Trade Commission (FTC) including the Magnuson-Moss Warranty Act and FTC consent orders.
- j. Provide an affidavit signed and notarized by the responsible parties certifying that, in the event the approval is granted to the alternate plan, the Warranty Guarantor and Warranty Administrator are fully and completely aware of all the requirements and conditions of Chapter 31C of the Montgomery County Code and its regulations. It must be further certified that they will abide by all requirements and conditions of Chapter 31C of the Montgomery County Code and its regulations.



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- 8.5 Each application for approval of an alternate plan must be accompanied by a non-refundable application fee of \$2,000.
- 8.6 Within 60 days from the date of the notice of filing, the Department must either approve or reject the application.
- 8.7 In the event the Department finds the application does not meet the requirements of Chapter 31C of the Montgomery County Code and these regulations it must issue a notice of rejection stating the reasons for the rejection.
- 8.8 Approval is valid for a period of one year from the date of approval. Applications for reapproval must be filed with the Department not later than 60 days before the expiration of the previous approval. Applications for reapproval must be accompanied by a \$2,000 fee. The Department will then review the application for renewal and if required, stipulate any conditions imposed for renewal.
- 8.9 If at any time during the period of approval any material fact stated or described in the application for approval changes, the applicant must file an amended application with the Department within 30 days after the change occurs.
- 8.10 The Director may revoke or suspend the approval for an alternate plan if, in the opinion of the Director, the alternate plan becomes financially unable to meet its obligations under the new home warranty or is administered in any way that denies the owner coverage provided in Section 31C-3 of the Act.
- 8.11 The Director may request that additional information be submitted by a private plan.



MONTGOMERY COUNTY EXECUTIVE REGULATION

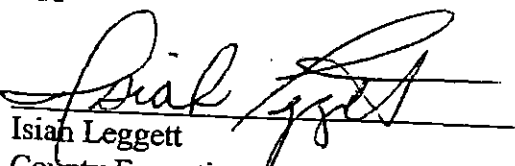
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Subject New Home Warranty and Builder Licensing	Number 6-08
Originating Department Office of Consumer Protection	Effective Date

Section 9. Severability

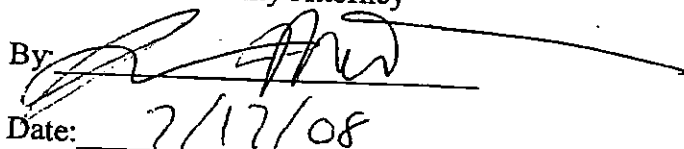
- 9.1 The provisions of these regulations are severable. If a court holds that a provision is invalid or inapplicable, the remainder of the regulation remains in effect.

Approved


Isiah Leggett
County Executive

Date: July 22, 2008

Approved as to Form and Legality
Office of the County Attorney

By: 
Date: 7/17/08
Walter E. Wilson